

EUROPEAN TRADE POLICY IN AGRICULTURAL PRODUCTS.

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Abstract.

Thirty years after the signing of the Treaty of Rome, the number of member States of the European Community has increased from six to twelve. In 1987, the Community is a more heterogeneous group than it was in 1957. The policies established to meet the needs of the 'original' six have to be adapted to meet the additional demands of the 'new' six.

The process of adaptation is most evident in the Common Agricultural Policy (CAP), the policy which has been described as the 'motor of European integration'. The need to adapt the CAP arises from criticisms of the operation of the policy by some member States and the Community's taxpayers. However, these criticisms should not dictate the process of adaptation. The interests, social, economic, and political, which lie behind the CAP must also be considered. The Community Institutions, therefore, have a delicate balancing act to perform as they adapt the policy in the light of these diverse interests.

One element which is missing from this balancing act is the demands of other countries. These countries are affected by the impact the CAP has on the international trading environment and the agricultural concessions they obtained by concluding agreements with the Community. The reason why these demands are not considered is that the Community does not have an explicitly formulated agricultural trade policy.

The absence of this policy lessens the impact of a range of external Community policies and retards the full development of other internal policies. Through an analysis of the international trading environment, the association and development co-operation policies of the Community, this paper outlines the negative impact which the CAP has externally. To counter this, the paper develops a Common Agricultural Trade Policy which will allow the Community to, maintain the benefits of integration, enhance the development of other common policies and have a positive impact on agricultural trade and external policies. Just as the CAP has been described as the motor of integration, the common agricultural trade policy may be described as the vehicle for growth, internally and externally.

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Finally I would like to thank my wife who kept me going and endured my absences with great fortitude.

Declaration.

In accordance with Regulation 2.4.15 of the Postgraduate Regulations I hereby declare that,

- (i) I have composed this thesis, and*
- (ii) the work is my own.*

JOSEPH A. McMAHON

Dedication

To Eilish and Connor

"Forever."

EUROPEAN TRADE POLICY IN AGRICULTURAL PRODUCTS

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The most visible symbol to third countries of the existence of the Common Agricultural Policy (CAP) is the Common Agricultural Policy (CAP). The CAP has also proved to be one of the most controversial aspects of European integration not only for consumers and taxpayers of the member States but also for agricultural exporters throughout the world. Despite the existence of a fully fledged CAP for quite a substantial period, it is not yet possible to state with certainty that the EEC has developed a Common Agricultural Trade Policy. The need to examine the external impact of the operation of the CAP arises for various reasons:

- internal debate on the possible reform of the CAP is continuous, it is important to examine the effects of any such reform on the trade relationships established by the EEC;
- the accession of Spain and Portugal to the EEC, both significant producers of agricultural products, will necessitate a re-appraisal of the policy. It is essential that this re-appraisal is not carried out at the expense of third countries;
- despite continual efforts to include agriculture in trade negotiations conducted under the auspices of GATT, continued failure to effect a genuine liberalization of agricultural trade constitutes a significant threat to the stability of economic relations between developed countries;
- given the demands of developing countries for a New International Economic Order and specifically for an Integrated Programme for Commodities, it is important that the EEC makes continual efforts to stabilize commodity markets, especially agricultural commodity markets;
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signatory countries. It is essential that agriculture should be dealt with as generously as possible; and,

- given the recent famine in the Sahel region of Africa, it is important to assess the strength and weaknesses of the EEC's food aid policy.

This section will focus on the agreements concluded by the

The absence of an explicitly formulated agricultural trade policy is in marked contrast with the EEC's policy in relation to industrial products. In this latter area the EEC follows a policy of free trade based on comparative advantages of production. The policy in relation to agricultural products is one of market insulation. The continued economic recession and the accession of the EEC to the new Multi-Fibre Agreement may be evidence of the rise of protectionism within the EEC in relation to industrial products. It is, perhaps, reasonable to assume that this policy of 'Fortress Europe' will be matched by increased protectionism in the agricultural sphere.

Generalized Scheme of Tariff Preferences. An

examination of the effectiveness of this scheme in
This paper will examine the methods chosen by the EEC to conduct its agricultural trade relations with third countries. Attention will focus on the following areas:

agricultural trade policy for the EEC based on the results of the

- (1) The European Community in the international arena. This covers;

- (a) the General Agreement on Tariffs and Trade (GATT). An examination of the effectiveness of this organization vis-a-vis agriculture and how it could be used either for the promotion of protectionism or liberalism; and,
- (b) the United Nations Conference on Trade and Development (UNCTAD). An inquiry into the Integrated Programme for Commodities and the call for greater use of International Commodity Agreements.

- (2) The Association Policy of the EEC. This encompasses;

- (a) the Mediterranean;
- (b) the European Free Trade Association (EFTA);
- (c) the countries of Eastern Europe; and
- (d) the relations established with certain developed and developing countries.

This section will focus on the agreements concluded by the Community with these groups of countries and an examination of the concessions given in the agricultural sphere.

(3) The Development Co-operation Policy of the EEC. This includes;

- (a) the ACP. An examination of the Lomé Convention provisions in so far as they pertain to agriculture;
- (b) food aid. An appraisal of the scope of the EC food aid programme; and,
- (c) the Generalized Scheme of Tariff Preferences. An examination of the effectiveness of this scheme in relation to the agricultural concessions given.

An attempt will be made in the conclusion to formulate an agricultural trade policy for the EEC based on the results of the examination of the areas outlined above.

1. See El-Agnaf, *The Economics of the Common Market* 141; March & Swanney, *Agriculture and the EC*, 13-16.

PART I. INTRODUCTION TO THE COMMON AGRICULTURAL POLICY

CHAPTER 1: THE HISTORY OF AGRICULTURE IN WESTERN EUROPE.

Virtually every developed country in the world today has an agricultural policy. The rationale given for intervention in this sector of the domestic economy by governments may be characterised as an interaction of the following variables:¹

- socio-economic; a concern with the provision of adequate food supplies for the entire population of the country;
- politico-economic; a concern with the promotion of an adequate rate of economic growth. The approach in this area is dependent on whether the country concerned is either an importer of agricultural products, in marginal or substantial amounts, or an exporter of agricultural products, through the achievement of limited or extensive self-sufficiency; and,
- socio-political; a concern with the welfare of the rural population. While recognising the income elasticity of demand for agricultural products in developed countries, it is considered desirable, or even necessary, to ensure an adequate level of income for the farming community.

The development of these variables can be traced to the history of agriculture in the developed countries. Within Western Europe it is possible to differentiate three periods when one or more of these variables held prominence.

¹ See El-Agraa, The Economics of the Common Market 141; Marsh & Swanney, Agriculture and the EC, 12-16.

From free trade to protectionism.

From 1860, free trade ruled for all products in Western Europe. The Anglo-French Treaty of Commerce (the Cobden Treaty)² paved the way for similar bilateral trade agreements, which together achieved this free trade. However, the practice of free trade was not enough to curtail a protectionist reaction, by some countries, to the arrival of American grain in the late 1870's.

This relatively short period of agricultural free trade in Western Europe was ended by the re-imposition of tariffs on agricultural products in 1878 by France³ and similar reactions followed in Germany⁴ and Italy. Whilst these countries met the threat from overseas competition by trying to protect their farmers, a different reaction was evident in the UK, Denmark and the Netherlands. In these countries, the threat was met by structural readjustment, thereby reaffirming their belief in the value of free trade.

Tracy⁵ recognises that the reaction of France, Germany and Italy, was to some extent predictable given the earlier social and economic development of these countries. Their reaction is also attributable to the structure of agriculture in these states. The revolution in France freed farmers from the seignioral privileges system, because of this agricultural holdings remained small and the farming community economically backward. A similar situation prevailed in Germany and Italy. In the UK the enclosure movement had led to a dramatic increase in the size of agricultural holdings and an equal decline in the level of

² A. Briggs, The Age of Improvement, 490. Tracy, Agriculture in Western Europe, 68.

³ Ibid, 69 et seq.

⁴ Ibid, 95.

⁵ Ibid, 34.

agricultural employment. This first wave of protectionism in agriculture in Western Europe is illustrative of the socio-political considerations which give rise to agricultural policies.

The countries of continental Europe, excluding Denmark and the Netherlands, sought to shield their farmers from the worst effects of the depression by imposing barriers to trade. The resort to protectionism in these countries, however, also led to a delay in the structural adjustment of their agriculture, thereby perpetuating the need for some form of protection. The consequences of this were to have a profound effect on the future of Western European agriculture.

The crisis of the 1930's.

The effects of the Wall Street Crash of 1929 and the Hawley-Smoot tariff in the United States of 1930⁶ were to set off a series of reactions in the states of Western Europe. Whereas during the first period considered the reactions of the European states varied considerably, during this second period there was a rough equivalence in the reactions of all states. The tariffs which had prevailed from the first period were no longer effective, given the need for balance of payment equilibrium. Efforts were now made to sell as much as possible abroad whilst ensuring that the domestic market was saved for the domestic producers. The economic disadvantages of tariffs were removed as prices became irrelevant in the search for overseas markets. This necessitated a move towards non-tariff measures.⁷

⁶ The Hawley-Smoot tariff imposed a high protective tariff on all goods coming into the United States.

⁷ For example — the milling ratio which ensured a certain percentage of domestic production had to be used in milling.

In France,⁸ import quotas were introduced and licence fees for their use were required. The licence fee served to eliminate the difference between the world price of a product and its domestic price, thereby acting as a variable import levy. This period also led to the direct involvement of governments in agriculture. For example in 1936,⁹ France introduced an organization to control the market in wheat and wine. In the UK,¹⁰ besides the use of import quotas, agricultural marketing boards¹¹ were established and a deficiency payments scheme introduced. Government intervention to organize domestic markets was justified by reference to the high level of protection accorded to industry, as a result of the depression.

Intervention in this period is illustrative of the politico-economic considerations which give rise to agricultural policies (i.e. a concern with balance of payments). As with the first period, the measures introduced in this period remained, thereby perpetuating the need for their existence and inhibiting the process of structural adjustment. Farm output was encouraged rather than inhibited. Speaking of this period in the history of European agriculture Tracy concludes,¹²

"The 1930's were characterised by the growth of political consciousness among farmers and by the development of farm organizations whose demands centred on protectionist measures. Neither they nor their governments showed much interest in basic reforms. In this period as in the late nineteenth century, the response to challenge was above all defensive and conservative."

⁸ Tracy op cit n2 p181.

⁹ Ibid, 185-187.

¹⁰ AJP Taylor English History 1914-45, 333-340.

¹¹ E.g. Sugar Industry Reorganization Act 1935. The Wheat Act 1932.

¹² Tracy op cit n2, 150.

The 1930's were to have a profound influence on the future development of the CAP. It was a period of substantial government intervention, the introduction of non-tariff measures and the colonial preferences systems.¹³ The growth of political consciousness within the farming community indicated that a return to the free trade policies which had characterised the first period in the history of European agriculture would not be easily accomplished.

From food shortage to food surplus.

The food shortages experienced during the second World War, and especially after the war, led to increasing governmental intervention in the agricultural sector. Whilst actuated by the desire to ensure adequate food supplies for their populations, a concern which had been to the fore in Germany and Italy¹⁴ before the war, balance of payments problems also dictated an increase in governmental intervention.

To achieve increased production, income guarantees were given to farmers, either through deficiency payments schemes or internal price support measures. In France,¹⁵ the Fonds de Soutien et de Garantie Mutuelle was introduced to support agricultural markets; all important products were the subject of market intervention. Even in the UK,¹⁶ the government sought to increase agricultural production through the re-introduction of the deficiency

¹³ Ottawa Agreements Act 1932.

¹⁴ Both these countries while aiming for a balance of payments growth, supported their agriculture in order to achieve national self-sufficiency.

¹⁵ Tracy op cit n2, 238.

¹⁶ Ibid, 237.

payments scheme and the marketing boards. In West Germany,¹⁷ Import and Export Boards were introduced to stabilise the prices of the main agricultural products. As world production increased and prices fell relieving the food shortages, there was no equivalent decline in the degree of intervention. Politically and economically committed to their farming communities a decline in the level of agricultural support could not be contemplated. It has been noted that,¹⁸

"From about 1953 there was a change in emphasis as agricultural production caught up with demand. The aim was no longer to raise production at all costs but to achieve selective expansion and to raise agricultural efficiency. At the same time, concern with the relatively low level of farm incomes was increasingly felt and governments were placed in a quandary as the price guarantees they offered farmers tended to stimulate excess production."

The emphasis in agricultural policy now shifted to the question of farm incomes and structural reform. It is against this background of governmental involvement in agricultural policy, the resulting low prices and excess production, that the EEC had to formulate an agricultural policy to suit the divergent interests of its member States.

- (1) the creation of a High Authority with supranational powers;
- (2) the control of production through prices fixed by the High Authority;

¹⁹ Laurens L. La Marche, Causson, 17.

²⁰ For a full account of this plan of Tracy see n2, 263-265.

¹⁷ Ibid, 240.

²¹ For a discussion of the Council of Europe see A.H. Robertson,

¹⁸ Ibid, 235.

CHAPTER 2: AGRICULTURE AND EUROPEAN INTEGRATION.

The Messina Resolution adopted by the Foreign Ministers of the six member States of the ECSC, declared their intention,¹⁹

"to work for the establishment of a united Europe by the development of common institutions, the progressive fusion of national economies, the creation of a common market and the progressive harmonization of their social policies."

In this fusion of national economies leading to the creation of a common market, it is trite to remark that agriculture had to be included. Yet before considering this point in further detail, it is important to realise that an attempt had been made before 1957 to establish a European organization for agricultural products.

The Green Pool Proposal (The Charpentier Plan)²⁰

This proposal was developed from a study initiated by the Consultative Assembly of the Council of Europe.²¹ The aim of the study was to decide how Western European countries could commonly organize their agricultural markets. The resulting plan became known as the Charpentier plan, after the French delegate who drafted it. The plan provided for :

- (1) the creation of a High Authority with supranational powers;
- (2) the control of production through prices fixed by the High Authority;

¹⁹ Lorette L. Le Marché Commun, 17.

²⁰ For a fuller account of this plan of Tracy op cit n2, 263-265.

²¹ For a discussion of the Council of Europe see A.H.Robertson, European Institutions Ch.2.

- (3) the elimination of all restrictions on the free flow of agricultural products between its members; and,
- (4) the harmonization of the costs of production, through compensatory taxes to be paid to those members with high costs of production.

Although laudable as a first attempt to integrate European agriculture, the Plan stood no realistic chance of acceptance. The structural diversity of European agriculture and the varying methods of support used by different states militated against its acceptance. A subsequent plan introduced by the French, just before the Schumann proposal, was also rejected (The Pflimlin Plan, this was based on the same general principles as the Charpentier Plan).²²

From Messina to Rome

Spaak, when speaking to the Intergovernmental Committee established by the Messina Resolution, declared,

"On ne peut concevoir l'établissement d'un marché commun général en Europe que l'agriculture s'y incluse. C'est l'un des secteurs où le progrès de productivité qui résulteront d'un marché commun, c'est-à-dire de la spécialisation progressive des productions et de l'élargissement des débouchés, peuvent avoir les effets les plus importants sur le niveau de vie des producteurs aussi bien que les consommateurs. En outre, cette inclusion de l'agriculture dans le marché commun est une condition d'équilibre des échanges entre les différentes économies des États membres...."²³

²² Tracy op cit n2, 265.

²³ Cited in Lasok and Bridge Introduction to the Law and Institutions of the EC, 373.

As Spaak recognised, it would have been inconceivable to establish a common market which excluded agriculture from its ambit. The inclusion of agriculture was necessary to balance the advantages expected from the formation of a common market. Consider the position of France and Germany. On the one hand the prospect of free-trade in industrial products would mean free access for competitive German industrial producers to the French market. On the other hand, free trade in agricultural products would mean free access for competitive French agricultural producers to the German market. If this had been denied to French producers, the attraction of the proposed common market would have been considerably reduced.

Even if all the member States had agreed to join an industrial common market, it is extremely doubtful whether this market could have succeeded, given the distortions of competition which would have arisen between member States. Recognising that agriculture should be included within the Common Market, did not answer the question of what type of policy was to be pursued. The Spaak report²⁴ recognised that agriculture held a very special position in all the member States, a point recognised when considering the history of agriculture in Western Europe. However the report was ambiguous on the type of policy to be adopted, and on the type of support which it envisioned. The report merely indicated that, as with other products, barriers must be gradually reduced within the member States during the transitional period, while a common policy was to be negotiated. This common policy would replace national regulations of the market, except in so far as the members could prove that national measures did not or would not affect the operation of the common policy. (This point is important when considering the development and functioning of the Community's agricultural structural policy).

²⁴ Part 1 Spaak Report, The Merging of Markets.

The report left essential questions unanswered, perhaps this is not surprising given the variegated pattern of national support measures and the problems encountered by the Charpentier Plan. However, it was obvious that the member States would seek to promote the same aims for agricultural policy within the EEC as they had in their respective national policies. Recalling these aims, the CAP, to be developed over the transitional period, would have to:

- (i) secure adequate food supplies for the population of Europe (a socio-economic objective);
- (ii) contribute to the overall economic growth of the member states, both jointly and individually (a politico-economic objective); and
- (iii) ensure an adequate standard of living for the farming community of all the member States (a socio-political objective).

The challenge facing the nascent EEC, in formulating a common agricultural policy was enormous. The ambiguity of the Spaak report and the generality of the Treaty provisions merely served to underline the enormity of the task. Yet that very ambiguity and generality also left considerable scope for the development of a mutually acceptable policy. Before going on to discuss the development of the policy, it is important to discuss the relevant Treaty provisions.

The Treaty of Rome

While the Treaty of Rome confirmed the inclusion of agriculture, the relevant provisions were very general. This is in marked contrast with the provisions of Title I of Part II, relating to free movement of industrial products. Whereas Title I lays down detailed rules for the establishment of a common market, Article 38(1) of Title II merely states that,

"The common market shall extend to agriculture and trade in agricultural products."²⁵

A further source of difference between the treatment accorded to industrial and agricultural products by the Treaty is evident from the provisions of Article 38(4),

"The operation and development of the common market for agricultural products must be accompanied by the establishment of a common agricultural policy among the member States."

The common market in agricultural products necessitated a common policy, whereas the common market for industrial products required no such policy. The distinction thereby established between these two types of products serves to illustrate both the lack of agreement in the Spaak Committee on the role of agriculture in the process of European intergration and the importance of agriculture within the member States.

The objectives set for the CAP, listed in Article 39(1), are,²⁶

- (a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilization of the factors of production, in particular labour;
- (b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
- (c) to stabilise markets;
- (d) to assure the availability of supplies;

²⁵ Agricultural products are listed in Annex II to the Treaty as amended by Reg.7a (JO 1961 71).

²⁶ In case 5/73 *Balkan v. HZA Berlin-Packhof* [1973] ECR 1091,1112 the ECJ recognising the conflicting nature of these objectives, allowed the Community institutions to accord 'temporary' priority to one of these objectives.

(e) to ensure that supplies reach consumers at reasonable prices."

It is important to ask the question; what type of policy is envisaged by these objectives? Article 39(1)(b) is, perhaps, the central objective (a fair standard of living for farmers). However, this is qualified by the word 'thus', thereby connecting Article 39(1)(b) with Article 39(1)(a). Clearly, the intention was to create some type of structural policy to ensure the rational development of agriculture. This conclusion can be supported on two grounds. Firstly, as already has been noted, since 1953 there had been a change of emphasis in agricultural policy, food shortages had been replaced by food surplus. It was realised that the price guarantees given to farmers had stimulated excess production without raising the level of farm income. The orientation of agricultural policy was beginning to shift towards a structural policy.²⁷

Secondly, Article 39(2) indicates that in developing the policy, account should be taken of the nature of agricultural activities, especially its structural nature. The policy to be implemented would gradually seek to remove the natural disadvantages of various agricultural areas. This structural orientation of the proposed common agricultural policy is further supported by the reference in Article 39(1)(b) to the "individual earnings of persons engaged in agriculture" rather than the agricultural community as a whole. Although this discussion of the proper orientation of the policy may be of little significance when consideration is given to the operation of the policy today, it is important in any discussion of the new directions which the policy may take. The discussion is especially significant when consideration is given to the formulation of a Common Agricultural Trade Policy.

²⁷ Tracy op cit n2, 235.

The objectives of Article 39(1)(c), (d) and (e) also constrain the central objective of a fair standard of living for farmers. The objectives listed in Article 39(1)(c)-(e) are subject to several interpretations. For instance, do they relate solely to the internal market? If they do not, do they establish the objectives for the external effects of the CAP? Does stability of markets refer to the internal market or the world market? The internationalization of these objectives could form the basis for an agricultural trade policy, to internalise these objectives could lead to an unduly protectionist policy. Support for the thesis that these objectives are external may be inferred from the interpretation of Article 39(1)(a) and (b) being directed towards a structural type policy, thereby necessitating some form of control of imports and exports.

In the analysis of the objectives of the CAP, it is important to consider them in the light of the Treaty as a whole.²⁸ The preamble of the Treaty recognises the desire of the member States to create improved social and economic development by,

"deciding to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade."

This, the sixth recital of the preamble, is reaffirmed in Article 3(b) and Articles 18 and 110. Article 18 states,

"The Member States declare their readiness to contribute to the development of international trade and the lowering of barriers to trade by entering into agreements designed on a basis of reciprocity and mutual advantage, to reduce customs duties below the general level of which they could avail themselves as a result of the establishment of a customs union between them."

²⁸ Case 83/78 *PMB v. Redmond* [1978] ECR 2547 at 2368, the ECJ recognised that provisions relating to the CAP have precedence over other rules relating to the establishment of the common market where the latter are less stringent than the former.

Article 110 states, *inter alia*,

"By establishing a customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers."

The question to be asked is; what is the relationship between the provisions on the CAP and Articles 18 and 110. Article 38(2) states that the rules laid down for the establishment of the common market are equally applicable to agricultural products unless Articles 39 to 46 provide otherwise. *Prima facie*, Article 18 is applicable to the CAP, however, Article 40(3) states that common organization established to attain the objectives of the CAP may include machinery for stabilising imports. This implies that custom duties and other more restrictive measures can be used in the common organizations established. This renders Article 18 inapplicable in so far as agricultural products are concerned.²⁹

If Article 18 is inapplicable, what about Article 110? The relationship between Article 38 *et seq* and Article 110 *et seq* is adequately demonstrated by their position in the Treaty. Whereas Article 38 is included in Part Two (the Foundations of the Community), Article 110 is in Part Three of the Treaty (the Policy of the Community), thereby emphasising the importance of the articles. The CAP, according to Article 40(1), was to be progressively established during the transitional period and to be brought into force by the end of that period. Article 111 lists the transitional arrangements to be applied and the Common Commercial Policy (CCP) itself comes into its own after the end of the transitional period. It could be argued that the member States

²⁹ *Idem*.

realised the development of the CAP was more important to their union than the CCP.

A further source of difference relates to the wording of these provisions. Whereas Article 39 lists the aims which the CAP shall have, Article 110 merely notes that the member States should aim to contribute, in their common interest, to the harmonious development of world trade. The difference in their places in the Treaty and the respective wording indicate that the CAP has precedence over the CCP, and in the event of conflict the former shall always prevail.³⁰

In conclusion, the interpretation of the objectives which the common agricultural policy would seek to attain suggest a preference for a structurally orientated policy with reasonably open access for third countries. In relation to the objectives of the CAP and other provisions of the Treaty, it is suggested that the interpretation shows a tendency towards the isolation of agriculture from provisions relating to the development of world trade. The next section will address the question of whether these nuances of interpretation are reflected in the evolution of the CAP.

³⁰ The aims expressed in Art.110 do not prohibit the Community from enacting provisions which may affect trade with third countries. The measures adopted will be valid if legally justified by provisions of Community Law (e.g. Art.39).

Cf case 112/80 *Durbeck v.HZA Frankfurt-am-Main* [1981] ECR 1095
case 245/81 *Edeka v.FRG* [1982] ECR 2745.

CHAPTER 3: THE EVOLUTION OF THE CAP.

From Stresa to common organizations.

Article 43(1) states that,

"In order to evolve the broad lines of a common agricultural policy, the Commission shall, immediately this Treaty enters into force, convene a conference of the member States with a view to making a comparison of their agricultural policies, in particular by producing a statement of their resources and needs."

The Conference was duly convened at Stresa in July 1958.³¹ Rather than clearing up the ambiguities of the Spaak report and concretising the generality of the Treaty provisions on agriculture, the Conference added to the confusion, by prescribing further objectives which the CAP should seek to attain.

It was perhaps inevitable that the final resolution of this Conference would be general and vague, a reflection of the diversity of existing agricultural policies in the member States. The Conference did reach a number of important conclusions:

- the structure of European agriculture was to be reformed. This would occur without prejudice to family character of agricultural holdings;
- Community-wide prices were to be established which would settle slightly above world prices. This would lead to the adequate remuneration of farmers without encouraging over-production; and,
- the Community should aim not at total self-sufficiency, but remain open to world trade, with the necessary measures to

³¹ For a fuller discussion of the Stresa Conference cf El Agraa op cit n1,147 ff: Tracy op cit n2, 269-70. European Documentation 6/82 The Agricultural Policy of the EC,14.

be taken to prevent distortions of competition of external origin.

Taking account of the conclusions of the Stresa Conference, the Commission³² continued its preparations of the proposals to implement the CAP. The slow rate of progress on implementation led to disputes between the Netherlands and Germany over the speed of industrial tariff cuts.³³ To resolve the dispute it was agreed that the implementation of the CAP should be expedited.³⁴ The original Commission proposals of November 1959 were revised and submitted to the Council. In December 1960, the Council made its first substantive decision on the CAP, a decision which would pave the way for the introduction of a common policy.³⁵ This first decision is significant in that it established the three basic principles of the CAP. These are;

- (i) common prices, through the elimination of barriers to trade and distortions of competition between the member States;
- (ii) common financing, member States would be called on to contribute to the financing of future common organizations of the market; and,
- (iii) community preference, to ensure that member States enjoyed the advantages of integration foreshadowed by the Treaty.

The threat of France and the Netherlands vetoing the progress of the Community to the second stage of the transitional period, was sufficient to lead to significant progress in the implementation of

³² The Commission is charged under Art.43(2) with taking into account the conclusions of the Conference and with the submission of proposals for the establishment of the CAP.

³³ Tracy op cit n2, 270.

³⁴ i.e. the final Commission proposals were to be ready by the end of 1960.

³⁵ Council of EC Resolution, December 1960.

the CAP in 1961.³⁶ The original decisions taken on the CAP, in the midst of a crisis, were to have a profound effect on the future development of the policy, it has been noted that,³⁷

- "(a) countries with high levels of price support wanted high common prices;
- (b) the range of products covered by the policy was expanded because each country had special interests in particular commodities;
- (c) there was less pressure on individual countries to limit price increases because of common financing; and
- (d) there was less pressure on member States to carry out structural reforms because of common prices and common financing."

In a decade where the main interest of the member States was the establishment of a common market, economic considerations of the practicability and flexibility of the policy were subjugated to the need to establish a Common European Policy for agricultural products. It is important to determine how the Community Institutions chose to implement the three basic principles of the CAP.

Common Prices.

Article 40(2) states,

"In order to attain the objectives set out in Article 39 a common organization of agricultural markets shall be established. This organization shall take one of the following forms, depending on the product concerned:

- (a) common rules on competition;
- (b) compulsory co-ordination of the various national marketing organizations;

³⁶ Tracy op cit n2, 272.

³⁷ Heidheus et al Common Prices and Europe's farm policy, 7.

(c) a European market organization."

In establishing common organizations, the Community Institutions have chosen option (c). It is possible to differentiate four categories of market organizations:³⁸

- (a) internal price support and external protection; (this covers about 70% of the Community's agricultural production);
- (b) external protection only (25% of Community agricultural production);
- (c) Additional product aid (2.5% of Community agricultural production); and
- (d) flat rate aid (0.6% of Community agricultural production).

By far the largest type of common organization of the market (COM) is one based internal price support and external protection. A large number of the COMs are based on the first and most important of the common market regimes, the cereals organisation. The price structure of this COM involves the fixing of the following prices; a target price, a threshold price and an intervention price.³⁹

The target price is the "lynchpin" of the market organization, it is, in effect, the price which it is hoped cereal producers will be able to attain on the open market within the Community.⁴⁰ In fixing this common price account is taken of the objective contained in Article 39(1)(b) (to ensure a fair standard of living for the agricultural community). For the cereals market, the target price is fixed for Duisburg, which is recognised to be the area of greatest

³⁹ Euro. Doc 6/82 op cit n31, 18-20.

³⁹ Reg.16/62/EEC (JO 1962 2553) established the first COM in cereals, the current regulation governing this COM is Reg.2727/75/EEC (OJ 1975 1975 L 281/1) as amended.

⁴⁰ Reg 2727/75/EEC Art.3(5).

cereals deficit. The setting of the target price does not guarantee that producers within the Community will obtain this price. If the market situation is one of excess supply, and hence falling prices, a minimum price is fixed, this is the intervention price.⁴¹ This is the price at which official intervention agencies must buy the products offered to them. It is, usually set between ten and twenty percent below the target price. To protect the Community market a threshold price⁴² is set which prevents imports from entering the market below the target price. Due to the variable nature of import prices a levy may be charged to bring the price up to the level of the threshold price (the variable import levy).⁴³

Article 40(3) provides that common machinery shall be established for stabilising imports or exports. While the variable import levy and the threshold price serve to stabilise imports, an export refund⁴⁴ is provided to enable Community producers to sell to the world market, when the price on that market is below the price prevailing on the Community market.⁴⁵ As Usher has noted;⁴⁶

"The price structure rests to a very large degree on the premise that the product is one in which the Community is largely self-sufficient and of which

⁴¹ Ibid Art.1.

⁴² Ibid Art.5.

⁴³ Case 17/67 *Neuman v.HZA Hof* [1967] ECR 441. The ECJ declared that import duties were not equivalent to customs duties.

⁴⁴ In times of shortage an export levy may be imposed so that world prices do not adversely affect Community prices. In case 95/75 *Effem v. HZA Luneberg*, the ECJ held five regulations imposing export levies to be invalid.

⁴⁵ Euro Doc 6/82 op cit n31 ,17 gives an excellent diagram explaining the interrelationship of the components of the price structure.

⁴⁶ Usher J. "Agricultural Markets. Their Price Systems and Financial Mechanisms." (1979) ELRev.147 , 150.

Community production is to be encouraged and that imports will be the exception and must not be allowed to disturb Community prices."

The system of price support entails the setting of a Community wide price level, the policy therefore requires a common denominator for the currencies involved. This common denominator was the agricultural unit of account as defined by Reg.129/62/EEC,⁴⁷ Article 1 of which adopted the 1934 value of gold in terms of the US dollar as the value of the unit of account. The adoption of this dollar/gold standard and the principle of fixed exchange rates, through the Bretton Woods Agreement, was to act as the foundation stone for the establishment of the CAP.⁴⁸ By virtue of Article 2(1) each amount whose value had been fixed in units of account, would be expressed in national currency, according to the exchange rate for that currency as recognised by the IMF.⁴⁹

Reg.129/62/EEC demonstrated the confidence of the member States in the IMF system by making it impossible for any alteration of an exchange rate which exceeded the limits set down by the IMF. This confidence was all too soon to be shattered. Reg.653/68/EEC⁵⁰ on the conditions for alteration to the value of the agricultural unit of account, filled the gap left by Reg.129, in the event of one or more member States changing their rate of exchange. The principle of automatic readjustment was applied only once in the manner envisaged by Article 3 of Reg.129, as amended. This occurred at the time of the French devaluation and the German revaluation of 1969.

⁴⁷ OJ Special Ed. 1952-67, JO 1962, 2553.

⁴⁸ Braakman "Monetary Evolutions and the CAP" (1978) CML Rev.157, 162.

⁴⁹ The International Monetary Fund was established by the Bretton Woods Agreement 1944.

⁵⁰ OJ Sp.Ed. 1968

The application of these rules to the respective devaluation and revaluation would have entailed an increase and decrease in agricultural prices. France, unwilling to countenance such a drastic change, was allowed a transitory period during which the realignment of agricultural prices to the Community level would take place. Germany was allowed a similar transitory period. To avoid foreign trade being affected by these measures, the Council provided for a system of import refunds and export fees in the case of France and import levies and export refunds in respect of Germany. This was to all intents and purposes the end of the phenomenon of common prices.

In May 1971, the German and Dutch governments decided to float their respective currencies, this led to the introduction of Reg.974/71/EEC,⁵¹ introducing monetary compensatory amounts (MCAs). The floating of the US dollar in August 1971 and the decision of Italy, Belgium and Luxembourg to float their respective currencies plus the decision of France to adopt a system of multiple exchange rates led to the extension of the MCA system to these countries.⁵² Reg.2746/72/EEC integrated the system of MCA's into the CAP,⁵³ by rendering their application obligatory in cases where deviations from the par value of the currency of a member State, as communicated to and recognised by the IMF, occurred.

Further devaluations of the US dollar led to a basic revision of the system established by Reg.974/71, Reg.1112/73/EEC⁵⁴ achieved

⁵¹ JO 1971 L 106/1.

⁵² Reg.509/73/EEC (OJ 1973 L50/1) extended the MCA system to depreciating currencies.

⁵³ OJ 1972 Oct.-Dec.64: Art.1(1) of this Regulation replaced the legal basis of Reg.974/71. It is now based on Arts. 28, 43 and 235 EEC rather than Art.103 EEC.

⁵⁴ Reg.1112/73/EEC. OJ 1973 L 114/4.

this revision by introducing an agreement by some of the member States (Germany, Benelux and Denmark, known as 'the snake') into the calculation of MCA's for those states. The MCA's for these currencies were calculated on a fixed basis, because of the requirements of the joint float (i.e. the currencies were required to maintain as between themselves a maximum spread of 2.25% at any one time). The value of the agricultural unit of account was, therefore, linked to the snake. Since less than half of the Community's agricultural business was conducted in snake currencies, this value became increasingly arbitrary and could not give a true indication of the level of common prices within the Community.

MCA's were introduced to avoid the disruption of the system of intervention laid down by Community rules and to prevent abnormal movement of prices from jeopardising the normal trend of agricultural business. Their effects and application are strictly neutral,⁵⁵ as they are limited to the amounts necessary to compensate for the effects of monetary fluctuations on the prices of basic products covered by the intervention arrangements⁵⁶ and applicable only in those cases where these effects would lead to difficulties.⁵⁷ MCA's cannot be characterised either as import

⁵⁵ Cf case 4/79 *Providence Agricole de la Champagne v. ONIC* [1980] ECR 2823, 2845.

⁵⁶ Reg. 974/71, Art. 1(2)(b) states that the charging or granting of MCA's is authorised for products which fulfil two conditions —
 (a) their price must depend on the price of products covered by intervention arrangements under the COM's;
 (b) the products in addition be governed by a COM. See case 8/78 *Milac v. HZA Saarbrücken* [1978] ECR 1041.

⁵⁷ If MCA's are fixed at such a level so as to lead to over-compensation, the neutrality of MCA's is lost and they may be declared invalid. see *Providence Agricole* op cit n55.

levies or export refunds⁵⁸ (import refunds or export levies) since they serve a totally different purpose.

A resolution of the European Parliament⁵⁹ has characterised MCA's as, a breach of the unity of the common agricultural market; disruptive of trade in agricultural products; as a distortion of competition and as such they cause resources to be misallocated on an artificial basis. The existence of the MCA system thus threatens the very existence of the CAP by encouraging a return to national agricultural policies.

The European Court of Justice, has upheld the MCA system,⁶⁰

"These measures, intended to compensate temporarily for the harmful effects of national monetary measures, so that the process of economic integration may meanwhile continue its progress, are of an essential transitory nature."

In a later case, the Court observed,⁶¹

"Diversion of trade caused solely by the monetary situation can be considered more damaging to the common interest bearing in mind the aims of the CAP, than the disadvantages of the measures in dispute."

Commentators on the CAP have been divided on the effects of the MCA system on the CAP. One author has stated,⁶²

⁵⁸ Reg.509/73/EEC (OJ 1973 L 501/1) Art.3: Reg.1386/75/EEC (OJ 1975 L 139/37) Art.6. Both these provisions emphasise the difference between MCA's and customs duties and export levies.

⁵⁹ OJ 1980 C 97/33.

⁶⁰ Case 5/73 *Balkan v.HZA Berlin Packhof* [1973] ECR 1091, 1111.

⁶¹ Case 9/73 *Schluter v.HZA Lorrain* [1973] ECR 1135, 1159.

⁶² Heidheus et al op cit n37, 33.

"[The] MCA system ... allows member States considerable freedom in determining the level of their domestic farm product prices and in general bring about inter-country transfers which are politically acceptable and economically reasonable."

Yet others have stated,⁶³

"Ever since their introduction, MCA's have represented the non-attainment of the objectives set by the Community. They have enabled countries to enjoy somewhat different price levels for agricultural products, despite the declaration of common prices each year. The unity of the various produce markets have been broken up into partial markets with different prices, linked by the MCA."

The conversion of agricultural units of account into national currencies at representative rates (commonly referred to as green rates), was generalised by Reg.475/75/EEC.⁶⁴ However the choice of the rate has often been such that MCA's are introduced almost immediately. This has been recognised by the Commission, indeed in a proposal relating to the fixing of 'green' rates the Commission has stated,⁶⁵

"the development of the currency of certain member States has several times led to MCA's of such a nature as to turn the system from its original objectives."

The Commission were rightly concerned that due to inappropriate green rates for the currencies of some member States MCA's,

⁶³ Buckwell et al. The costs of the CAP, 91-92.

⁶⁴ OJ 1975 L 52/28 has been continuously amended; see Reg.1223/83; OJ 1983 L 132/33.

⁶⁵ OJ 1976 C 274/3 Proposal for a Council Regulation.

instead of stabilising the functioning of the common agricultural market, might actually cause its disturbance.⁶⁶ There has been considerable reluctance on the part of some member States to eliminate unduly artificial green rates. It has been recognised that an unduly artificial green rate does provide an element of stabilization for domestic farmers.⁶⁷

The importance of MCA's has been reduced owing to introduction of the European Monetary System (EMS) and the introduction of the European Currency Unit (ECU) into the agricultural sector.⁶⁸ The EMS⁶⁹ has established a central rate for each currency in the system (all member States except the UK and Greece) against the ECU (the new unit of account). The system, which limits the permitted fluctuations of a currency against the basic rate to a margin of 2.25%,⁷⁰ determines the basic rate through a series or grid of bilateral exchange rates for each participating currency against the other currencies.⁷¹ As a result of the relative monetary stability achieved through the EMS and the introduction of the ECU into the CAP, the high level of MCA's have receded. This gives rise to the belief that as economic convergence between the

⁶⁶ Cf Advocate General Warner case 138-139/79 *Roquette* [1977] ECR 1854 and *Schluter* op cit n61, 1158: Grant "The Politics of the Green Pound" (1981) 19 JCMS 313 at 314.

⁶⁷ Buckwell et al op cit n63, 92.

⁶⁸ Reg.652/79/EEC (OJ 1979 L 84/1) Art.1 states that amounts fixed in units of account for the purposes of the CAP shall be expressed in ECU by means of a co-efficient of 1.208953.

⁶⁹ Cf Reg.3180/78 (OJ 1978 L 379/1). This regulation in conjunction with Reg.3181/78/EEC establishes the EMS.

⁷⁰ Italy has a margin of fluctuation of 6%.

⁷¹ The method of calculation is similar to that used to calculate the rate and weighting of the IMF's Special Drawing Rights.

member States continues, MCA's may be phased out altogether. Moreover, as the Commission has stated,⁷²

"Since the EMS was introduced and the ECU applied in the CAP, important progress has been made towards the re-establishment of price unity by amending the representative rates ... these amendments to the representative rates have automatically led to a reduction in the MCA's of the member States concerned. These measures have made it possible since the application of the ECU in the CAP, to reduce by about two times the difference between the lowest and highest national agricultural prices for most products."

Despite continual efforts to totally eliminate MCA's⁷³ they still prevent the establishment of a common price throughout the Community. However, they are a problem of declining significance, MCA expenditure falling from about 14.5% of the expenditure of the Agricultural Fund in 1977 to circa 2% in 1984.⁷⁴ This expenditure is financed through the Community budget and it is this aspect of the CAP which the next section examines.

Common financing. ⁷⁵

Article 40(4) states,

"In order to enable the common organization referred to in paragraph 2 to attain its objectives,

⁷² EPWQ 694/79 (OJ 1980 C 206/1).

⁷³ E.g. Reg.855/84/EEC (OJ 1984 L 90/1).

⁷⁴ EC Bulletin Supp.4/83 Adjustment of the CAP Annex II, Agricultural Situation in the Community 1984 Report Table 43.

⁷⁵ See generally ,Strasser The Finances of Europe Ch.11 Financing the CAP.

one or more agricultural guidance and guarantee funds may be set up."

Reg.25/62/EEC⁷⁶ duly established a single fund, the European Agriculture Guidance and Guarantee fund (commonly referred to under its French acronym, FEOGA). The fund was subdivided by Reg.17/64/EEC⁷⁷ into two sections:

- a Guarantee Section for market expenditure; and
- a Guidance Section for structural expenditure.

Reg.25 affirmed the principle of common financial responsibility by providing in Article 2(2), ⁷⁸

"Since at the single market stage price system will be standardised and agricultural policy will be on a Community basis, the financial consequences thereof shall devolve upon the Community."

From the implementation of Reg.25 until Reg.729/70⁷⁹ the finance operation of the Guarantee Section was based on the reimbursement of the member States for their expenditure under the section. By virtue of Article 1 of Reg.729/70/EEC, FEOGA formed part of the Community budget and Article 1(2) of this regulation states that the role of the Guarantee section was to finance refunds on exports and intervention arrangement.⁸⁰

⁷⁶ JO 1962 991.

⁷⁷ JO 1964 586.

⁷⁸ Idem.

⁷⁹ JO 1970 L 94/13.

⁸⁰ See Arts.2 and 3(1), Reg.729/70.

— The Guarantee Section

As stated above the Guarantee Section finances⁸¹ expenditure which arises from common agricultural markets and price policy. A major element of this expenditure is the intervention arrangements of the various COM's. Under these COM's member States must intervene on the market to ensure that farmers obtain the minimum guaranteed price for their production. This intervention also ensures that supplies are available to the consumer. Two differing types of intervention are practised, first category intervention and second category intervention. Under the former the Community provides for uniform amounts of expenditure, for example, aid for the private storage of butter.

Second category intervention is by far the most important type of intervention since it involves the buying in, storing, processing, even marketing, of products which the intervention agencies are obliged to take. Intervention in this category leads not to uniform expenditure as under the first category intervention, but to expenditure which is dependent on the costs of physical storage (for example, the difference between the buying in price and the selling price of goods in intervention). So the economic consequences of intervention under the COM's is not limited to storage but also extends to the disposal of these stocks. It is in this area that export refunds are relevant.

As previously indicated the price structure of the COM's makes provision for the granting of export refunds, which reflect the difference between the price on the Community market and the prevailing world price. Expenditure in this area is financed by the Guarantee Section, the level of expenditure is variable as it is determined by the level of world prices. The Guarantee Section is also responsible for several other items of expenditure. For example, expenditure on obligations under other policies, such as

⁸¹ Reg.1883/78 (OJ 1978 L 216/1) laying down general rules for the financing of interventions by the EAGGF, Guarantee Section.

the obligation contained in Protocol 3 of the first Lomé Convention which obliges the Community to purchase a certain amount of sugar from signatories to this convention.⁸² The Community food aid policy is another of the policies where the Guarantee Section incurs expenditure.⁸³ As previously indicated above, the section is responsible for the payment of accession compensatory amounts and MCA's.

It would be incorrect to assume that the CAP is self-financing since there is no correlation between income and expenditure. Indeed a high level of expenditure by the Guarantee Section indicates that there has been high production leading to an increased level of intervention. As a consequence of the high level of domestic production the level of imports will decline hence fewer import levies will be collected. So, the level of income declines whilst the level of expenditure increases.⁸⁴

— The Guidance Section

As already stated, Reg.17/64 indicated that the Guidance Section would finance the structural programme. Whereas in relation to the price and market policy developments were aimed at the replacement of the diverse national policies by one common policy, a different approach was evident for structural policy. For the structural policy, there would be no common policy. Instead there would be Community co-ordination of the existing national policies.

⁸² See Part IV of this paper.

⁸³ *Idem.*

⁸⁴ Art.3 Co Dec 70/243/EEC (JO 1970 L 94/19) total revenue from agricultural levies is entered in the budget of the Communities.

Projects to be financed under Reg.17/64⁸⁵ had to further the basic objectives of the CAP, to improve either the structure of agricultural production or the marketing structure of products subject to a common organization of the market. Community contributions to the financing of the projects submitted by the member States under Reg.17/64 was subject to a maximum amount of forty per cent. Progress towards the co-ordination of the various national measures led only to limited changes in the agricultural structures of the member States. In an attempt to formulate a truly common structural policy, a plan was drawn up by the Commission in 1968, it became known as the Mansholt Memorandum.⁸⁶

The memorandum aimed at a comprehensive reform of agricultural structures. This entailed a reduction in the total agricultural area and marketing improvements; the new agriculture structure would be based on the formation of enterprises of an adequate size. Two types of measures were anticipated; measures to help people take up alternative occupations or to retire; and, measures to help those who remained modernise their farms.⁸⁷ The proposals, when made public, provoked severe criticisms and it was not until 1972 that any action was taken on the plan. The directives issued were a considerable retreat from the thrust of the original memorandum. Dirs. 72/159-161/EEC encouraged the cessation of farming and the reallocation of agricultural land, for the purpose of structural improvement and the improvement of the occupational skills of farmers.⁸⁸ Several factors obstructed any substantial

⁸⁵ Reg.17/64 Art.2 states that the action to be taken by the Guidance Section action under this article has been replaced by Reg.355/77/EC OJ 1977 L 51/1.

⁸⁶ EC Bull Supp 1/69.

⁸⁷ Ibid p7.

⁸⁸ Dir. 72/159-161 OJ Sp Ed 1972 (II) 324-344.

improvement in agricultural structures, in particular the recession slowed down the exit of farmers to industry.

The economic recession of the early 1970's necessitated a reappraisal of the structural policy. Since 1973 measures have been directed to those adversely affected by the decline in economic activity and the policy as a whole has become more regionally orientated. Examples of this include Dir. 75/268/EC⁸⁹ which is directed to mountain and hill farming and farming in other less-favoured areas and Regs.1361-1362/78/EEC,⁹⁰ the start of the Mediterranean package. These regulations recognised that special measures were necessary to alleviate the problem inherent in Mediterranean agriculture.⁹¹ It has been recognised that,⁹²

"In following the development of structural policy in the EC, it becomes clear that the concept of agricultural policy has broadened to embrace social considerations. The main focus of the CAP has become more overtly the welfare of the farmer in relation to their counterparts in other sectors of the economy. As well as broadening to encompass social considerations, structural policy has become concerned with rectifying the divergence of regional agricultural income levels within the Community. To this end measures designed to tackle the particular problems of certain areas have come to the fore."

The accession of Spain and Portugal necessitates a further reappraisal of the structural policy. This reappraisal should aim

89 OJ 1975 L 128/1

90 OJ 1978 L 166/1 and 9

91 See Green Europe no.181 A New Common Agricultural Structural Policy : Green Europe no.197 The Integrated Mediterranean Programme and Barbero G. "Towards a better structural policy" 11 Eur.Rev.Agric.Econ.245.

92 Marsh and Swanney op cit n1, 47.

to achieve a lasting improvement in the productivity of all agricultural producers, while recognising the constraints imposed by the current economic climate and attempts to reform the price policy. To perform a vital role structural policy will require more funds. The re-establishment of an equitable relationship between expenditure under the Guarantee and the Guidance Sections of FEOGA would be a positive step.⁹³

Community Preference

Community preference means that domestic producers are given priority over all other suppliers. This principle of the CAP has three aspects; total freedom of trade within the Community; external protection to ensure imported products do not enter at prices below those prevailing on the Community; and finally safeguard provisions to ensure that disturbances on the world market do not adversely affect the objectives of the CAP as enumerated in Article 39.

The first of these aspects (total free trade) is shared with industrial products. For agricultural products as for industrial products, tariffs on trade between the member States were to be progressively removed over the transitional period. A similar obligation exists for quantitative restrictions (Article 44). The Treaty also provided for the conclusion of long-term agreements or contracts between the member States until the separate national organizations of the market were replaced by a common organization (Article 45). If common organizations of the market are not established by the end of the transitional period, then the national organizations, if they exist, are subject to the Treaty rules on the free movement of goods and even the rules on

⁹³ The original ratio was set in 1964 (2:1). See also E.C. Commission The Importance and Functioning of FEOGA (1977).

competition.⁹⁴ Even if a common organization exists, this is no guarantee that there will be no restrictions on trade, non-tariff barriers such as national health legislation still have to be harmonised. Progress towards full free trade has been slow given the prevalence of non-tariff measures of protection in member States. Yet the Community maintains its goal of total harmonization. One further factor which could lead to the distortion of free trade within the Community is national aids granted by the member States.⁹⁵ While the Treaty does not prohibit them, such aids must be in conformity with the provisions of the Treaty. Since national aids are kept under review by the Commission, it is unlikely that aids which cause a distortion of competition will be permissible.⁹⁶

The second aspect of Community preference noted above is one of the more obvious signs to third countries of the existence of the CAP. When discussing the price structure of COM's, it was noted that a threshold price was set and a variable levy imposed to ensure that third country producers do not disturb the internal market through cheap imports. The use of the variable import levy ensures that Community producers are insulated from disturbances on the world market.

As a supplement to the variable import levy most COM's provide a safeguard clause, which allows for imports to be restricted whenever,

⁹⁴ Case 337/82 *St.Nikolaus Brennerei v.HZA Krefeld* [1984] ECR 1051.

⁹⁵ Arts.92 and 93 EEC.

⁹⁶ Art.93(1) EEC. State aids which interfere with a common organization of the market are prohibited: case 177/78 *PBC v.McCarren* [1979] ECR 2161, 2190.

"... the Community market ... is threatened with serious disturbance which may endanger the objectives set out in Article 39 of the Treaty."⁹⁷

So long as the choice of product and third country is based on objective criteria, it is not possible to challenge the validity of the measures taken by the Community. Community institutions rarely invoke these clauses since negotiations are entered into with the "alleged" offender, which result in an agreement between the Community and the third country which effectively limits future exports by the latter. The disturbance on the Community market is remedied without recourse to the safeguard clauses of the COM's.⁹⁸

What type of agricultural policy has developed from the application of these three basic principles? For some the CAP is a "considerable success", for others it is "the cornerstone of European integration", yet for others it raises more problems than it solves, creating surpluses, depressing world trade without any structural readjustment within the Community.

Criticisms of the Common Agricultural Policy

This section does not attempt to show how the EEC has coped with criticisms of the CAP, it serves merely to outline some of the problems encountered by the policy and how the Community proposes to deal with these problems.

It is often asserted that the main problem associated with the CAP is the lack of sufficiently effective regulatory mechanisms which

⁹⁷ Based on Art.20 Reg.2727/75 op cit n39.

⁹⁸ see Sack. "The Commission's Power under the Safeguard Clauses of the COMs." (1983) 20 CML Rev 757.

gear production to demand.⁹⁹ This criticism stems from two sources. Firstly, it is claimed that the open-ended nature of the intervention system does not inhibit production. The intervention system means that farmers have a ready market for their production which they can sell to regardless of price. Secondly, the CAP in its effort to achieve the central objective of Article 39, a fair standard of living for the farming community, was implemented by means of a price policy. Although it is politically acceptable to raise prices, decreases or marginal increases of price encounter severe criticisms from farmers. Since politicians are acutely aware of the role played by the farming community, they are unwilling to countenance a reduction in prices.

Further criticisms relate to the operation of the price policy within the COMs,¹⁰⁰ it is argued that the CAP benefits the large producers who have the most favourable production structures. Equally, it is maintained that the nature of the COM's lead to a North-South dichotomy within the Community. Northern producers (i.e. in Germany, Benelux and Northern France) benefit from advantageous organizations in milk, sugar and cereals, products recognised as the core of the CAP. Southern producers do not have equally advantageous COM's for their main products.

The most frequent criticism of the CAP in recent years relates to the budgetary consequences of the policy.¹⁰¹ It is alleged that the burden which agriculture imposes on public funds is too large. As a result some member States are net contributors to the budget whilst others are net beneficiaries. The ever increasing resources

99 Green Europe, March 1980: Agriculture and the Problem of Surpluses.

100 COM (80) 800 Reflections on the CAP, 8: see Bergeman D. "North-South balances and conflicts within the Community" (1986)

11 Eur.Rev.Agr.Econ.151.

101 Ibid, 10. see Larsen A. "Major factors behind the problems of the CAP" (1986) 11 Eur.Rev.Agr.Econ.121.

directed towards structural surpluses created by the operation of the price policy are another source of criticism.

The Commission recognises that any adjustment to the CAP must reconcile four main objectives,¹⁰²

- "(1) to maintain the positive aspects achieved, (i.e. consumer security of supply, income of farmers, free trade and the contribution of farming to external trade);
- (2) to set up mechanisms whereby the budgetary consequences of production surpluses may be held in check and so public funds better used;
- (3) to ensure better regional distribution of the benefits derived by farmers from the CAP; and,
- (4) to organize the financing of the CAP on sound foundations which will not cause disputes in future between member States."

It has to be noted that none of these objectives meet the most persistent criticism of the CAP by third countries;¹⁰³ that the policy unnecessarily hampers trade by establishing too great a level of protection for the domestic market. The high level of protection excludes those countries who have a comparative advantage in the production of agricultural products from deriving maximum benefit from this advantage.

When the Community discusses external agricultural policy,¹⁰⁴ it is from the point of view of either, acquiring instruments similar to those enjoyed by other exporters of agricultural products, or, from the point of view of limiting imports to achieve domestic stabilization. It is important that the Community carry out

¹⁰² Ibid, 14.

¹⁰³ House of Lords Select Committee on the EC: 2nd Report 1981-82 Agricultural Trade Policy, 9.

¹⁰⁴ COM (80) 800 op cit n100,19.

reforms on the CAP. However, this reform should not be at the expense of third countries. The CAP was formulated at a time when the EEC, as a whole, was still a net importer of agricultural products and not a significant exporter, although the former is still true, the EEC has become a very significant exporter of agricultural products. Future reform of the CAP should not only take account of this fact but also the impact which reform will have on third countries.

It is to the external environment to which Chapter 4 turns for a brief analysis of the Community's import measures and the structure of trade concessions.

The scope of these preferences is directly related to the importance of the product within the framework of the CAP. Table 1 summarizes the position.¹⁰⁵ For those products which form the core of the CAP, cereals and dairy products, variable levies are applied which effectively protect Community production of these products. The result of this external protection is that third countries are denied the opportunity of expanding their trading opportunities and are pushed into the role of residual suppliers of the Community market. This occurs even if the third country has a comparative advantage in the production of this product. Protection tends to lessen as the product becomes of less significance to the CAP.

This product analysis can be brought a stage further when considering the structure of agricultural concessions granted by the EEC. The network of trading relations is illustrated in Table 2.¹⁰⁶

¹⁰⁵ Harris, Swinbank and Wilkinson, *The Food and Farm Policies of the EC*, 262.

¹⁰⁶ *Ibid.*, 265.

Table 1: NETWORK OF IMPORT MEASURES

CHAPTER 4: THE EXTERNAL ENVIRONMENT.

As indicated in the introduction, despite the existence of a fully-fledged CAP for some period, the EEC does not have an explicitly formulated agricultural trade policy. The relations which the EEC has with third countries, insofar as these relations concern agriculture, revolve around attempts by these third countries to secure access for some or all of their agricultural products to the Community market. As a result of these attempts the EEC has established a network of relations in which agriculture preferences are given.

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¹⁰⁵ Harris, Swinbank and Wilkinson The Food and Farm Policies of the EC, 262.

¹⁰⁶ Ibid, 265.

Table 1: NETWORK OF IMPORT MEASURES

Products	Protection
1. Cereals, Sugar, Dairy Products, Olive Oil.	Variable levies.
Pigmeat, poultry, meat & eggs.	Variable levies plus additional levies if necessary.
First stage processed derivatives.	Variable levies including a fixed element for processor participation.
2. Beef.	Ad Valorem duties plus variable levies (related to the domestic price as a proportion of the guide price).
Sheepmeat.	Variable levies, subject to a GATT binding and supported by VRA's.
3. Wine, fresh and preserved fruit and vegetables.	Ad valorem duties but with provision for use of counter-vailing duties to ensure minimum import prices are not undercut. Some fresh product duties are raised or lowered according to a seasonal calendar.
4. Second stage processed agricultural products (not in Annex II) derived from group 1 above.	Fixed levies based on (normally) quarterly averages of variable levies applied to the basic products in a previous period, plus a fixed element for processor participation.
5. Oilseeds, tobacco and miscellaneous products in Annex II.	Ad valorem duties with provision for use of a safeguard clause if necessary.
Manioc.	VRA.
6. Potatoes, ethyl alcohol and cork.	Products not yet subject to the CAP market system, member States may use national measures additional to the CCT.
7. Agricultural raw materials (e.g. cotton, rubber, timber and wool).	Treated as industrial products with low rates of ad valorem duties.

Table 2. THE NETWORK OF TRADE CONCESSIONS

Countries	Concessions
1. The Lomé Convention 66 ACP countries (the remaining European dependencies receive equivalent trade concessions).	Exemption from import duties for all industrial and virtually all agricultural products. Some concessions on leviable agricultural products in the form of a reduction in levies. Special import arrangements sugar, rum and beef, concessions are however limited by quotas.
2. Mediterranean Agreements (All the Mediterranean, save Albania and Libya; the EEC Lebanon agreement is defunct.)	Reduction in import duties for most industrial and agricultural products. Very few concessions on leviable agricultural products, if granted are limited by seasonal calendar quotas and/or minimum import price.
3. Generalized System of Preferences.	Exemptions or reduced rates of duty for many industrial and some agricultural products. Very few products sensitive to domestic EC interests are covered.
4. Ad hoc arrangements Range of co-operation agreements with most countries or groups of countries. Some trade concessions for industrial countries (NZ, Canada, US). Such concessions result from bilateral negotiations under the GATT.	Agreements here may give no trade preferences at all, or only apply to a few key products for the country/countries concerned (e.g. concession for NZ dairy products, Canadian cheese).
5. The EFTA Countries	Virtually complete industrial free trade throughout Western Europe, except for agriculture. Few concessions given (eg cheese from Switzerland and Finland).

PART II: THE EEC IN THE INTERNATIONAL

Marsh and Swanney distinguish four ways in which the CAP affects other countries,¹⁰⁷

- "(1) Agricultural duties and valuable import levies ensure internal producers enjoy a measure of protection from external competition. The justification for such a policy stems in part from the problems of agricultural adjustment within the Community and in part from the residual character of international trade in agricultural products.
- (2) The CAP encourages the substitution of imports by home production. (Especially where the level of protection accorded different products varies.)
- (3) Where Community production exceeds domestic consumption the CAP provides for export restitutions (thereby disrupting agricultural markets for third countries).
- (4) In trade negotiations, the CAP is regarded as non-negotiable."

Considerable scope exists for the Community to grant further trade concessions and to lessen the restrictive trade impact of its price policy, for the benefit of third countries. It is however, equally possible for the Community to remove the concessions granted and to tighten its import policy.

The next section is directed to attempts to regulate the international trade in agricultural products either through the GATT or under the auspices of UNCTAD.

"Under the prevailing circumstance Europe is seen by many as the only possible hope and the only political power potentially able to fill the leadership gap. Among all industrialised countries, Europe probably has the greatest immediate economic interest in reducing the constraints caused by scarcities and

¹⁰⁷ Marsh and Swanney op cit n1, 48-50.

PART II: THE EEC IN THE INTERNATIONAL ARENA

INTRODUCTION:

Any attempt to develop a Common Agricultural Trade Policy by the EEC will have to take into account the international environment in which the policy will operate.

One aspect of this environment is the international arena, where efforts have been made, in the GATT and UNCTAD, to establish a framework for the conduct of world trade. This part of the paper seeks to ascertain not only the nature of these two organizations and the obligations inherent in membership of each but also how these matters will affect the formulation of a Common Agricultural Trade Policy. One needs to ask whether there should be some form of international framework for the conduct of world trade. Recalling the effects of the absence of such a framework in the 1930's, hopefully everyone should agree that it is essential.

Mere recognition of the need for such a framework, is not sufficient. The specific contents and the degree of flexibility inherent in this framework are also essential considerations. At a time when the world is faced with the spectre of protectionism, it is imperative that efforts towards liberalization should be made. The GATT and UNCTAD provide a forum for these discussions and it is important that the EEC contribute as fully as possible to these discussions. As Brandt states,*

"Under the prevailing circumstance Europe is seen by many as the only possible hope and the only political power potentially able to fill the leadership gap. Among all industrialised countries, Europe probably has the greatest immediate economic interest in reducing the constraints caused by scarcities and unstable modes of behaviour."

The good intentions of the twelve member States are insufficient for the Community to fulfil this role. What is needed is a political commitment to match the undoubted economic strength of the Community. A time for action has arrived, let us hope the Community is not found wanting.

CHAPTER I: HISTORY 1945-60

From Havana to Gatt

Determined to prevent a return to the policies of the 1930's which had led to the deterioration of the international trading environment, the Allies,¹ after the war, set about constructing a "Charter for World Trade".² To this end the recently established United Nations convened a Conference on Trade and Employment. The deliberations of this Conference led to the formulation of the Havana Charter for an International Trade Organization (ITO).³ The ITO Charter envisaged the ordered reconstruction of all aspects of international trade, encompassing such matters as economic development and reconstruction,⁴ commercial policy,⁵

* Brandt, "A Challenge for Europe" (in ed. Stevens C. The EEC and the Third World, A Survey. Vol.III The Atlantic Rift).

¹ Primarily the United States and the United Kingdom; the Atlantic Charter 1942 formed the basis for these post-war organizations.

² See Wilson C. A Charter for World Trade (1949).

³ See United Nations Conference on Trade and Employment. Final Act and the Havana Charter for an International Trade Organization with related documents. Cmd Paper 7375 (1948).

⁴ Havana Charter, Chapter III Articles 3-15. Cmd Paper 7375, 11-23.

⁵ Chapter IV-Articles 16-45, *ibid* 21-51.

Section I. The General Agreement on Tariffs and Trade

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⁴ Havana Charter, Chapter III Articles 8-15. Cmd Paper 7375, 11-20.

⁵ Chapter IV Articles 16-45, ibid 21-51.

restrictive business practices⁶ and inter-governmental commodity agreements.⁷

However, the failure of the United States Congress to ratify the Charter effectively sounded its death-knell.⁸ In an effort to salvage something from the negotiations, Chapter IV of the ITO Charter on Commercial Policy became the General Agreement on Tariffs and Trade (GATT). The structure of Chapter IV was altered to accord with the more limited purpose of the GATT. Whereas the Charter had been concerned with establishing a framework for the conduct of all aspects of international trade, the GATT was limited to a reduction in tariffs and other barriers to international trade.⁹

The failure of the ITO and the emergence of a much more limited alternative, the GATT, were to have a profound effect on the future of world trade management.¹⁰ However, before going on to discuss this, it is important to look at the basic structure of the GATT obligations.

⁶ Chapter V Articles 46-54, *ibid* 51-56.

⁷ Chapter VI Articles 55-70, *ibid* 56-63.

⁸ Wilcox *op cit* n2, 53.

⁹ Preamble to the GATT, Basic Instruments and Selected Documents (BISD) Vol.IV (1969), 1.

¹⁰ Note for example that the failure to implement Chapters III and VI of the Havana Charter had an adverse impact on the development of the less advanced countries.

The Structure of the GATT Obligations, Article 1:1

The preamble to the GATT states the intention of the Contracting Parties to raise their standards of living, to ensure full employment, to develop the full use of world resources and to expand the production and exchange of goods. The means to achieve these objectives was the conclusion of,

"...reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce."¹¹

The method chosen to ensure a substantial reduction in tariffs was the general most-favoured-nation (mfn) clause which forms the core of the Contracting Parties obligations. Article 1:1 GATT provides,

"with respect to customs duties and charges of any kind imposed on or in connection with importation or exportation ... any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties."¹²

Article 1:1 imposes two obligations on all Contracting Parties, reciprocity and non-discrimination.¹³ These obligations were thought to be the most efficacious method of ensuring that

¹¹ BISD Vol.IV (1969) 1.

¹² Ibid, 2.

¹³ Espiell H.G. — "The mfn clause: Its present significance in GATT." (1971) 5 JWTL 29.

distortions of competition would be abolished and that trade would take place on the basis of comparative advantage. This would further the objectives of the GATT.

However, Article 1:1 is not an isolated rule, the two obligations of reciprocity and non-discrimination must be examined in the light of the whole Agreement. For example, Article 1:2 allows for the continuation of existing preferences, thereby forming an immediate exception to the non-discrimination obligation.¹⁴ For the purposes of this paper, it is important to look at two further exceptions to the mfn principle; Article XXIV, the customs union and free trade area provision and the Protocol of Provisional Application (PPA), which has a considerable effect on the role of the GATT in the regulation of international agricultural trade

Article XXIV, The Customs Union Exception¹⁵

Article XXIV establishes an exception to the mfn principle for regional arrangements that satisfy the criteria detailed in paragraphs (4) to (10) of that Article. Article XXIV:4 states,

"The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognise that the purpose of a customs union or a free trade area should be to facilitate trade between the constituent

¹⁴ This provision was necessary to ensure the continuing legal acceptability of British and French colonial preferences.

¹⁵ See generally, Huber J. "The practice of GATT in examining regional arrangements." (1981) 19 JCMS 281; Haight F.A. "Customs Union and Free Trade Areas under GATT; a Reappraisal." (1972) 6 JWTL 391; Dam K. "Regional Economic Arrangements and the GATT" (1962-63) 30 Univ. of Chicago L.Rev.615.



territories and not to raise barriers to the trade of other contracting parties with such territories."¹⁶

The Contracting Parties first dealt with the EEC Treaty at the eleventh session of GATT in late 1956, at a time when the Treaty of Rome was still in the negotiating stages. Between this and the next session, an inter-sessional committee was established to examine the Treaty. At the twelfth session the Contracting Parties launched a full-scale discussion on the compatibility of the Treaty establishing the EEC and the GATT.¹⁷

It soon became obvious that a fundamental difference of opinion existed between the representatives of the six member States and the other members of the Working Party established to examine the agreement. One source of friction was the proper interpretation of Article XIV:4. The representatives of the member States maintained that paragraph 4 should be interpreted independently of the other paragraphs. So, if the proposed customs union satisfied the requirements of paragraphs 5-9, it would automatically satisfy the requirements of paragraph 4. However, the other members of the Working Party asserted that paragraph 4 established the basic principle with which a customs union must accord before it can be considered compatible with the GATT.¹⁸

It is submitted that the interpretation advocated by the latter group is correct, as Article XIV:4 states that the regional arrangement should facilitate trade and not raise barriers to the trade of other Contracting Parties. Indeed, the general tenor of the agreement is trade creating, therefore, it could be argued that customs unions should be in accordance with the general thrust of

¹⁶ BISD Vol.IV (1969) 41.

¹⁷ BISD 6th Supp 71.

¹⁸ Ibid, 73.

the GATT. The impact of this argument on the proper interpretation of Article XXIV:4 was displaced by a concern that other Contracting Parties would not be disadvantaged in their trading relationship with this new regional arrangement.¹⁹ Theoretical questions gave way to the practical reality of trade and the impact the nascent EEC on this trade.²⁰ The Working Party expressed the following conclusion.

Disputes also arose over the interpretation of other provisions of Article XXIV. It was agreed that the EEC satisfied the definition of a customs union given in Article XXIV:8(a)(i) and (ii), because duties and other restrictive regulations would be eliminated on substantially all trade between the members. Moreover, provision had been made for a common external tariff. Concern was expressed over the interpretation of the provisions of the EEC Treaty relating to agriculture. In relation to this point discussion in the Working Party centred on the provisions of Article XXIV:5(a). This provides that in relation to duties and other regulations of commerce imposed at the beginning of the customs union, they²¹

"... shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union"

Several factors contributed to this concern; the wide area of discretion left to the Community institutions; and the absence of a precise plan showing the application of Articles 38 to 47 of the EEC Treaty; and the process of removing trade barriers between the Six. The Working Party reached no firm conclusion on whether

¹⁹ Dam op cit n15, 662.

²⁰ Haight op cit n15, 397-401.

²¹ BISD Vol.IV (1969), 42.

the provisions of the Treaty relating to agriculture were compatible with the GATT.²²

Concern was also expressed that the proposed common agricultural policy would lead to the curtailment of third country exports to the Community. The majority of the Working Party expressed the following conclusion,

"The particular measures envisaged under the Treaty carried a strong presumption of increased external barriers and a substitution of new internal barriers in place of existing tariffs and other measures."²³

The end result of the Working Party's deliberations was that the EEC were subjected to the consultation procedure provided for in Article XXIV:7 GATT.²⁴ In relation to agriculture, it was recommended that the Committee of the GATT, should set up suitable machinery "to follow and consider together with the six" the measures to be taken in the course of establishing the Common Agricultural Policy and the relationship of these measures with the provisions of the General Agreement.²⁵

The failure of the Working Party to reach agreed conclusions on the compatibility of the EEC Treaty with the General Agreement, has had profound effects on the development of the GATT.²⁶ This failure, also shared by the Working Parties established to consider the first and second enlargement of the EEC,²⁷ has been

22 BISD 6th Supp.88.

23 Idem.

24 See Article XXIV:7 GATT, BISD Vol.IV (1969) 42-43.

25 BISD 6th Supp.89.

26 Huber op cit n15.

27 BISD 30th Supp.168 at 190. Accession of Greece to the EEC.

considered by some as one of the elements which contributed to the gradual shift away from the GATT as the body responsible for the orderly conduct of world trade.²⁸

The problems associated with regional arrangements was not anticipated by the framers of GATT. This conclusion is supported by the position of Article XXIV in the GATT agreement. It is found in part III, the part which deals with general administrative measures concerning the territorial scope of the agreement.²⁹ The provisions of Article XXIV charge the GATT with the task of reconciling regional arrangements with free trade, the failure of the GATT to effect this reconciliation is attributable to several factors.

As Dam notes³⁰ the standard chosen to gauge the compatibility of regional arrangements with GATT are deceptively concrete and precise. However, they make little economic sense. None of the regional arrangements forwarded to the GATT for examination has ever been rejected as incompatible with Article XXIV. Problems of interpretation have also dogged the GATT's attempt to develop a consistent line of jurisprudence. As stated earlier, the dispute in the EEC Working Party over the interpretation of Article XXIV:4 and its relevance to the subsequent paragraphs of Article XXIV, was one of the first concrete examples of the deceptive nature of this provision. Subsequent regional arrangements have led to disputes over the meaning of "on the whole"³¹ (Article XXIV:5(a))

²⁸ See Hudec R. "GATT or GABB? The future design of the General Agreement on Tariffs and Trade." (1970-71) 80 YLJ 1299".

²⁹ Jackson J. World Trade and the law of GATT (1969).

³⁰ Dam op cit n15 660-661.

³¹ See the GATT examination of the Montevideo Treaty (1960) establishing the Latin America Free Trade Area. BISD 9th Supp.87.

and more importantly, "substantially all trade"³² (Article XXIV:8(a)(1) and (b)). As Haight concludes,³³

"If the GATT is to retain a significant influence on world trade policy, a new understanding of the meaning and application of Article XXIV is one of the issues that must be resolved. That Article ... is probably the most abused in the whole Agreement."

At a time when the rules of the GATT are being flouted and when many consider the GATT an unsuitable body for the regulation of world trade, it is essential that the EEC should respect and comply with the provisions of Article XXIV, in particular, and the GATT as a whole.

A discussion of the EEC's status under the GATT raises the question, what is the status of the GATT in Community law?³⁴ It has been noted³⁵ that the relationship between the Community and the GATT is one of the "unexplored areas of conflict" in the Common Commercial Policy. It has to be recognised that the relationship between the Community and the member States in the GATT context has never been explicitly stated. Whereas the member States retain their capacity as Contracting Parties, the Community institutions have assumed responsibility for the bulk of the commercial negotiations undertaken within the framework of the obligation inherent in membership of the GATT. However, before discussion of the rights the EEC could exercise, it is important to discuss the Protocol of Provisional Application (PPA).

³² See the GATT examination of the Stockholm Convention establishing the European Free Trade Area BISD 9th Supp.70.

³³ Haight *op cit* n15, 391.

³⁴ See Steenbeegen J. "The Status of GATT in Community Law" (1981) 15 JWTL 337.

³⁵ Pescatorr P. "External Relations in the Case Law of the Court of Justice of the EEC" (1979) 16 CML Rev.615.

of the GATT.³⁶ Given the jurisprudence of the ECJ,³⁷ it is suggested that this conflict in the Common Commercial Policy should be resolved in favour of the Community. This jurisprudence is also relevant when we consider the question asked above, the ECJ has stated,³⁸

"[i]t appears that in so far as under the EEC Treaty the Community has assumed the powers previously exercised by the member States in the area governed by the General Agreement, the provisions of that Agreement have the effect of binding the Community."

Recognising that the Community has precedence over the member States and that the provisions of the GATT bind the Community, helps to answer the next logical question. Is the EEC capable of exercising any rights under the GATT? As Steenbergen concludes,³⁹

"The European Community is de facto a member in its own right of GATT, as its policies are frequently subject to negotiations between the Contracting Parties and the Community."

Given that the EEC is a de facto member of the GATT it can be argued that it is capable of exercising rights, since it also assumes the obligation inherent in membership of the GATT. However before discussion of the rights the EEC could exercise, it is important to discuss the Protocol of Provisional Application (PPA).

³⁶ See Feld. The European Common Market and the World (1967) ch.6.

³⁷ See Case 3, 4 & 6/76 *Kramer* [1976] ECR 1297; case 36/73 *Nederlandse Spoorwegen* [1973] ECR 1299.

³⁸ Case 21-24/72 *International Fruit Co.* [1972] 1 ECR 131.

³⁹ Op cit n34, 343.

The Protocol of Provisional Application (PPA)

The realization by some of the Contracting Parties in 1947 that certain aspects of their domestic legislation did not fully accord with the provisions of the GATT led to the drafting of the PPA.⁴⁰ Rather than await the repeal of these conflicting pieces of legislation, the PPA allows the Contracting Parties to provisionally apply,

- "(a) Parts I and III of the General Agreement on Tariffs and Trade, and
- (b) Part II of that Agreement to the fullest extent not inconsistent with existing legislation."⁴¹

In a Working Party Report, adopted by the GATT, the phrase 'existing legislation' was interpreted as meaning,⁴²

"... legislation which is, by its terms or expressed intent, of a mandatory character — that is, it imposes on the executive authority requirements which cannot be modified by executive action."

This Grandfather Clause, as this part of the PPA became known as, allows Contracting Parties to derogate from the provisions of the General Agreement. The PPA imposes no obligation on the Contracting Parties to repeal existing legislation which contravenes Part II the GATT, that part of the agreement containing the most important provisions. In relation to agriculture, the effect of the PPA was much more serious, since it allows for the retention of domestic agricultural restrictions. The PPA and the whole structure of GATT were seriously questioned

⁴⁰ See Jackson J. "The Puzzle of GATT" (1967) 1 JWTL 131. Dam K. "GATT as an International Organization" (1969) 3 JWTL 374.

⁴¹ BISD Vol.IV (1969), 77.

⁴² BISD 3rd Supp 250.

by the United States(US) in the early 1950s when it requested a waiver from certain obligations imposed by membership of the GATT.

Agriculture and the GATT , The US waiver

It could be said that the framers of the GATT were suffering from a misconception when they drafted the agreement. The misconception being the assumption that agricultural products could be subjected to the same disciplines as industrial products. Evidence to prove this theory is the relative paucity of provisions in the GATT dealing specifically with agricultural products. In their efforts to ensure a balance of advantages from the GATT, the framers did not pay sufficient attention to the nature of agricultural policies.

The PPA is a recognition of the probability that any attempt to eliminate certain trade restrictions might have resulted in the total rejection of the General Agreement, because of the powerful domestic economic interests served by these restrictions. There was no similar realization of the powerful economic, social and political forces which had led to the introduction of all-pervasive agricultural support programmes in the 1930's.⁴³ The future of the GATT and its application to international agricultural trade will be determined by the resolution of the conflict between two sets of opposing interests. On the one hand the economic, social and political interests which advocate a certain level of protection for domestic agricultural producers. On the other hand the economic, social and political interests which advocate free trade and adherence to the theory of comparative advantage. As an example of this conflict, it is helpful to examine the attitude of the US towards the GATT in the early 1950's.

⁴³ BIRD Vol.IV (1969) 44-45.

⁴³ See Part I of this paper.

When the GATT was being drafted the US insisted that a provision be included which would permit the retention of quantitative restrictions when the latter were directed to the enforcement of domestic agricultural programmes. The success of the US in ensuring such a provision (Article XI:2(c)) legalized the retention of section 22 of the Agricultural Adjustment Act 1933. In 1951, section 22 was amended to allow for the imposition of quotas and licence fees on imports of agricultural products when their import threatened to disturb domestic price support programmes. Such quotas were allowed regardless of the international commitments entered into by the US. The application of this power by the US to the import of dairy products constituted a flagrant violation of the obligations assumed under the GATT. To ameliorate the situation, the US requested a waiver from its GATT obligations under Article XXV:5. This provides,⁴⁴

"In exceptional circumstances not elsewhere provided for in this Agreement, the Contracting Parties may waive an obligation imposed on a contracting party by this Agreement."

The US representative argued, in the Working Party established to consider the request, that the nature of the domestic agricultural support programme meant that imports were attracted in such exceptional quantities that the domestic programmes were being adversely affected.⁴⁵ The US representative recognised, however, that the 1951 amendment to section 22 of the Agricultural Adjustment Act 1933 had placed the US in violation of its GATT obligations. Hence the need for the waiver. The arguments of the US representative were accepted and the waiver requested was granted, under Articles II and XI GATT.

⁴⁴ BISD Vol.IV (1969) 44-45.

⁴⁵ BISD 3rd Supp.32.

As part of the decision, it was recognised

"The United States will remove or relax each restriction permitted under this waiver as soon as it finds that the circumstances requiring such restriction no longer exist or have changed so as no longer to require its imposition in its existing form."⁴⁶

Discussions in the Working Party suggested that some amendments should be included in the essentially 'open-ended' waiver sought by the US. The following are illustrative of the proposed amendments:⁴⁷

- (i) any waiver granted should be defined in scope and limited to those products which were actually under restriction;
- (ii) the waiver should be granted for a limited period of time or that it should be stipulated as a condition that restrictions applied under it should be eliminated after a specified date; and finally,
- (iii) as a condition of the waiver, the United States government should undertake to adopt measures to remove the underlying causes of the situation which necessitates the application of restrictions under section 22.

However, the US objected to these amendments on the grounds that if they were included in the waiver, it would not be suffice to meet the need for which it was requested. The views of the US representative prevailed and the waiver granted was essentially a 'carte blanche' for the US Government to pursue its domestic agricultural policy whilst ignoring the ramifications of the policy

⁴⁶ Ibid, 34 (paragraph 5 of the Decision).

⁴⁷ BISD 3rd Supp.141, 142.

on the GATT.⁴⁸ The only obligation imposed on the US was that it report regularly on the waiver. It is interesting to examine these reports to determine the attitude of other Contracting Parties to the 1955 US waiver. One review noted the effect of the waiver on other Contracting Parties and more importantly on the latter's agricultural policies.⁴⁹

"Governments of other countries were under constant pressure from their producers to follow protectionist policies and even small progress towards the removal by the United States of restrictions would be an encouragement to other countries to take similar action."

As time passed, other Contracting Parties began to realise that the amendments rejected by the US representative in the 1955 Working Party, seriously undermined the impact of the General Agreement in relation to agriculture.⁵⁰ The open-ended nature of the waiver, according to some Contracting Parties, has frustrated the fulfilment of the objectives of the GATT in relation to agricultural trade. Further reviews of the waiver⁵¹ serve to reinforce this sense of frustration. A sense of frustration which has not been eased by the US as there has been no significant

48 Warley states "At a time when other exporters were highly agitated about agricultural trade restrictions, the architect of the trading system and the custodian of liberalism was itself giving primacy to national interests and demanding sanction for the use of a barrier which the agreement had set out to control and eliminate, namely quotas." Warley T. "Western Trade in Agricultural Products" (in ed. Shonfield International Economic Relations of the Western World 1959-71, Volume I: Politics and Trade) 287, 347.

49 BISD 8th Supp. 173, 177.

50 BISD 9th Supp. 259.

51 E.g. BISD 11th Supp. 235; 13th Supp.132; 15 Supp.197; 18th Supp.223; 27th Supp.206.

removals or relaxations of the restrictions imposed. One of the latest reviews of the waiver notes,⁵²

"section 22 controls did constitute a major derogation from the GATT rules and that the United States continued to benefit from special privileges afforded by the waiver which were not available to other Contracting Parties."

The report continued,⁵³

"This has created a situation of serious imbalance in rights and obligations under the General Agreement. The inequity of this situation was even more serious because if other Contracting Parties applied restrictions on imports, they could always be challenged under Article XXIII proceedings which, while applicable, were not practicable with regards to restrictions applied by the United States under the waiver."

This discussion of the US waiver raises the following question. Is the GATT a suitable arena to discuss problems of international agricultural trade?⁵⁴ The US agricultural waiver, the proliferation of regional economic arrangements and the consequent weakening of the mfn principle, have led many⁵⁵ to question the continuing relevance of the rules laid down by GATT. This questioning relates not only to agricultural products but also to industrial products. The increasing level of world economic interdependence has led to the realisation that the limited objectives of the GATT are inadequate for an effective regulation of the international trading

⁵² BISD 30th Supp.221, 222.

⁵³ Ibid. 223.

⁵⁴ See Hudec R. "GATT or GABB? The future design of the General Agreement on Tariffs and Trade" (1970-71) 80 VLJ 1299, 1349.

⁵⁵ See Espiell op cit n13, 36.

environment.⁵⁶ However, it would be wrong to dismiss the role of GATT in the future regulation of international agricultural trade. As Warley notes,⁵⁷

"Agricultural trade liberalization is an area in which GATT has had meagre success. However, this is not because there is anything fundamentally deficient in the GATT as a legal document as it pertains to agriculture. What [is] missing above all else ... [is a] willingness on the part of virtually all important Contracting Parties to allow agriculture to be subject to the same rules and travel the same route at the same speed as industrial products."

Chapter 2 considers the provisions of the GATT relevant to agriculture and considers the weaknesses of each of the provisions. In the light of these weaknesses, several proposals are made which would improve the relevant provision, and thereby make that provision more relevant to the modern reality of the Contracting Parties' agricultural policies. Chapter 3 addresses the general efforts which have been made, and are being made, to ensure that the GATT becomes more relevant to agricultural policies and international agriculture trade.

⁵⁶ Hudec, op cit n54, 1351, notes that the tight consensus which existed at the beginning of GATT operations has disappeared, the focus of the Contracting Parties has shifted to market management and away from trade.

⁵⁷ Warley op cit n48, 352.

CHAPTER 2: THE PROVISIONS OF GATT RELEVANT TO AGRICULTURE.

As previously stated all Contracting Parties, with the exception of the United States, must abide by the rules of GATT as they apply to agriculture. It is important to analyse these provisions and to determine the parameters within which a common agricultural trade policy would operate.

Article XI. General Elimination of Quantitative Restrictions.¹

Article XI:1 enjoins the Contracting Parties to eliminate the use of quantitative restrictions on the importation of any product. A specific exception was made for the use of quantitative restrictions in the implementation of domestic agricultural support programmes. Article XI:2, for example, allows for import restrictions which are necessary to the enforcement of government measures aimed at the removal of a temporary surplus of a like domestic product.

The use of quotas permitted by Article XI:2(c) must relate to a government measure which restricts either the production or marketing of domestic production. Any restriction on imports, as the wording of Article XI:2 indicates,²

"shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might

¹ See Appendix A.

² Idem.

reasonably be expected to rule between the two in the absence of restrictions."

Given the need for any measure to meet this requirement and the obligation of the Contracting Party to give public notice of either the total quantity or the total value of the product permitted to be imported, it is not possible to use Article XI:2(c) for protectionist purposes. The further requirement that the domestic product must be restricted to the same degree as the imported product, indicates that it is not possible to use this provision to apply restrictions to imported products in such a way as to boost domestic production of a like product, or a product which can be directly substituted for the imported product.

This latter provision is important when considering the proposal of the European Commission on changes to the conditions under which certain animal feed proteins are imported into the EEC. Recognising the requirements of Article XI:2(c), the Commission stated,³

"It would be extremely difficult for the Community to adopt vis-a-vis non-member States, especially developing countries, certain restrictive measures if such measures were solely justified by considerations of protectionism and if they were not part of an overall concept, the aim of which was the achievement of a better balance in the cereals sector."

Any restrictions imposed on the import of animal feed proteins/cereals substitutes would have to be accompanied by a comprehensive programme restricting domestic cereal production. Any action the EEC may wish to take in relation to cereal

³ COM.(82)175 Changes to the conditions under which certain products for use as animal feed are imported into the Community, 14.

substitutes could not be taken under Article XI:2(c) unless restrictions are also imposed on domestic production.⁴

The question of whether the EEC could exercise its rights under the GATT was canvassed above and answered affirmatively. Further support for this answer can be found in the proposition that if you are found to have breached a specific Article, you must also be capable of exercising rights under the same Article.⁵ Article XI of the GATT was relevant in a complaint made by the US on the EEC programme of minimum import prices, licences and surety deposits for tomato concentrates.⁶

In the GATT Panel established as a result of the complaint, the US representative argued⁷ that the minimum import price for tomato concentrates, which prohibited the importation of the product below a certain price, was a restriction on imports. Thus, it was in breach of Article XI:1. He argued that the effect of the minimum import price was to raise the price of the product for the benefit of Community producers by limiting imports. Furthermore, the system could not be justified under Article XI 2(c) as there was no system leading to the restriction of domestic production. The EEC representative argued⁸ that the system had been established to

⁴ BISD Vol.IV (1969). This conclusion is based on the assumption that all countries which export products used as animal feed to the Community are members of the GATT. Thailand for example is not a member of GATT and the Community has concluded a voluntary export restraint agreement with Thailand relating to imports of manioc to the Community.

⁵ See Chapter 1, Article XXIV, The Customs Union Exception.

⁶ BISD 25th Supp.68.

⁷ Ibid, 74-75.

⁸ Ibid, 74.

prevent imports coming in at prices which would adversely affect the intervention system of the fresh tomato market.

The Panel's analysis of the problem revealed the following conclusions;⁹ the minimum import price was a restriction within the meaning of Article XI:1; and, more importantly, the intervention system for fresh tomatoes did not constitute a governmental measure excepted under Article XI:2(c). Since the measure was not justified under Article XI:2(c), there was a prima facie case of nullification or impairment¹⁰ of the benefits accruing to the US under the General Agreement. This particular complaint is illustrative of two points. Firstly, Article XI:2(c) cannot be used for protectionist purposes; restrictions on imports must be accompanied by substantially equivalent restrictions on domestic production. Secondly, the rise of non-tariff barriers (i.e. the licences and surety deposits) as a method of controlling the import of directly competitive agricultural products.

Hillman¹¹ defines a non-tariff barrier (NTB) as,

"any governmental device or practice other than a tariff which directly impedes the entry of imports into a country and which discriminates against imports (i.e. does not apply with equal force on domestic production)."

⁹ Ibid, 95-107.

¹⁰ BISD 11th Supp.100 gives the following definition of nullification or impairment. "In cases where there is a clear infringement of the provisions of the General Agreement or in other words where measures are applied in conflict with the provisions of GATT and are not permitted under the terms of the relevant protocol under which the GATT is applied by the Contracting Party."

¹¹ Hillman J. Non-tariff Agricultural Trade Barriers (1978), 1, 14.

As noted above, the 1930's led to wide-scale introduction of non-tariff barriers in the agricultural area.¹² Such measures ensure the smooth functioning of domestic agricultural support programmes and present an obstacle to trade liberalization. The decreasing significance of tariffs as an obstacle to trade has resulted in an increase in GATT activity in the non-tariff area. A GATT study of non-tariff barriers identified five general categories: ¹³

1. Government participation in trade;
2. Customs and administrative entry procedures;
3. Health and safety standards, packaging and labelling regulations;
4. Specific limitations on imports and exports; and
5. Restraints on imports and exports by the price mechanism.

Within each of these general categories, several sub-categories also exist. Category 5 includes a mechanism used by the EEC which has given rise to considerable criticism by the Contracting Parties — the variable levy.¹⁴

Complaints about the CAP by third countries centre, on the import side, on the effect of the variable levy.¹⁵ It is alleged that the variable levy system operated by the EEC serves to insulate the domestic market from economic conditions which prevail on the world market. The effect of the levy on the world market is to

¹² For example, the milling ratio (see Chapter 1 of the first part of this paper).

¹³ Hillman op cit n11, 50.

¹⁴ See Part I of this paper for an explanation of the role of the variable levy in the price structure of the COMs.

¹⁵ Commonwealth Secretariat Protectionism Threat to the International Order (1982) 1, 75-76; Grennes T. "Economic Interdependence and the Variability of Tariffs." (1980) 14 JWTL 242.

magnify the effects of any disturbances because EEC producers and consumers are so insulated. As shortages emerge on the world market and the price of a particular product rises, the variable levy falls. This encourages imports above those which would have taken place had protection been by tariff only. This increased level of imports leads to a price rise and further destabilization of the world market. As the price of a product falls in relation to the Community price, the variable levy increases. Imports into the Community are discouraged, adding to the price fall and magnifying the destabilising effects of the levy.¹⁶

As an instrument of protection for the Community's agricultural production, the variable levy is extremely effective. As a factor leading to the positive adjustment of world trade, its effects are essentially negative. Yet the EEC has avoided recognition of the restrictive effects of the variable levy system¹⁷ and the Contracting Parties have concentrated their efforts on other aspects of the NTB problem. As an example of the Contracting Parties concern with the problem of non-tariff barriers the Tokyo Declaration of GATT ministers, which formed the basis of the last round of multilateral trade negotiations, declared as one of its aims,¹⁸

"[to] reduce or eliminate non-tariff measures or where this is not appropriate to reduce or eliminate their trade restricting or distorting effects and to

¹⁶ Ibid, 243.

¹⁷ However the Community has recently recognised that variable levies constitute "duties or other regulations of commerce in the sense of Article XXIV:5(a)." BISD 30th Supp.168, 187. This is a reversal of the position maintained by the Community since the variable levy was introduced.

¹⁸ BISD 20th Supp.19.

bring such measures under more effective international discipline."

One of the concrete results of the Tokyo Round of negotiations was an Agreement on Technical Barriers to Trade,¹⁹ which subjected all products to its provisions.²⁰

The basic obligation contained in the Agreement states that the Parties shall ensure that technical regulations and standards shall not be adopted which constitute, or create, an obstacle to international trade.²¹ Article 2:2 of the Agreement indicates that all Parties shall adopt international standards, except where this is inappropriate for reasons of human health, safety, or the protection of the environment.

While recognising the importance of the Agreement on Technical Barriers to Trade and the contribution it could make to the elimination of certain non-tariff barriers, it is only the beginning.²² It deals with only one category of non-tariff barriers recognised by the GATT study and as such the Agreement is only the first step in dealing with the problem of non-tariff barriers. Efforts will have to continue to avert this danger to international trade. As Hillman notes,

"... progress through liberalization actions in future rounds of GATT negotiations will depend on the degree to which the bargaining governments can move away from the air of unreality which

19 BISD 26th Supp.8.

20 Article 1(3) of the Code.

21 See the Preamble and Article 2(1) of the Code.

22 See Middleton R. "The GATT Standards Code" (1980) 14 JWTL 201.

sometimes accompanies discussions of NTB's and the extent to which they can move beyond the deliberations on 'policy' to the harsher world of political action."

Hillman concludes,²³

"It is essential to any GATT negotiations that all participants recognize the nature of the disease they are trying to cure, so that too much time and energy will not be spent dealing with symptoms. National domestic policies are the root cause of agricultural protection and for the interference in the free flow of international trade."

By recognising that non-tariff barriers from an integral part of domestic agricultural policies, any assault on the former is a direct challenge to the latter. As the variable levy has been characterised as a non-tariff barrier, international efforts to control the problem of NTB's will assault this aspect of the CAP. The non-recognition of the restrictive effects of the variable levy system by the EEC delays any effective challenge to the system and, more importantly, to the CAP.

Article XVI, Subsidies²⁴

One aspect of the non-tariff problem recognised by the framers of the GATT was the provision of export subsidies. In relation to export subsidies for agricultural products Article XVI:3 GATT declares,

"... contracting parties shall seek to avoid the use of subsidies on the export of primary products. If however, a contracting party grants directly or

23 Ibid, 192.

24 BISD Vol.IV (1969) 26-27.

indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period, and any special factors which may have affected or may be affecting such trade in the product."

According to this paragraph, the obligation of each Contracting Party is not to acquire, through the use of export subsidies, a more than 'equitable share of world trade'. The immediate question to ask is, what is more than an equitable share of world trade?

As Article XVI:3 indicates account should be taken of the previous performance of a Contracting Party. An exporting Contracting Party entering the market for the first time will not mean that that Contracting Party has acquired a more than equitable share.²⁵ Given the factors which may cause a rise in exports from one Contracting Party to the detriment of another, such as a crop failure or advantages gained from lower transport costs, it is clear that the phrase in question presents considerable definitional problems. In a discussion of a complaint made by Australia on French exports of wheat flour,²⁶ the GATT Panel established listed several factors which it considered relevant in determining whether a Contracting Party had acquired more than an equitable share of world trade.

²⁵ Interpretative Notes and Article XVI:3, BISD Vol.IV (1969) 68-69 and see Evans J. "Subsidies and Countervailing Duties in GATT. Present Law and Future Prospects." 3 ITLJ 211 (1979).

²⁶ BISD 7th Supp.46.

The Panel indicated²⁷ that it was important to consider the desirability of satisfying world requirements in the product concerned, account being taken of the special nature of the product. Although the Panel easily established that there had been a quantitative increase in the level of French exports of wheat flour, it struggled with the problem of establishing a causal connection between the subsidy and the increase in the share of world export trade. The nature of this causative problem has already been mentioned by reference to the fact that increases in exports may be due to factors other than the subsidy.

In an effort to deal with the definitional problems inherent in Article XVI:3, the Tokyo Round negotiations discussed export subsidies. The end result of these negotiations was the Code on Subsidies and Countervailing Duties. Article 10(2) of the Code defines more than an equitable share as including,²⁸

"any case in which the effect of an export subsidy granted by a signatory is to displace the exports of another signatory bearing in mind developments on world markets."

The definitional problems inherent in Article XVI:3 has not been remedied as this new definition looks to the effects of export subsidies on the trade and production concerns of other signatories. This conclusion is illustrated by reference to the GATT Panels findings on complaints made separately by Australia and Brazil about EEC refunds on the export of sugar.²⁹ The complaints alleged that the system of export subsidies maintained

²⁷ Ibid, 52-53.

²⁸ BISD 26th Supp.56, 69.

²⁹ BISD 26th Supp.290 (The Australian Complaint); BISD 27th Supp.69 (The Brazilian Complaint).

by the EEC, had resulted in Community exporters having more than an equitable share of world export trade in sugar. This prejudiced Australian and Brazilian interests.

The Panels established could not reach a definite conclusion on the question of whether the EEC system led the latter to acquire more than equitable share of world export trade in terms of Article XVI:3. Although meeting before the conclusion of the Tokyo Round, the Panel had before it Article 10:2 of the Code on Subsidies, but the problem addressed in that section remained. The Panels concluded³⁰ that the EEC system for the granting of export subsidies and its application had contributed to depress world sugar prices. Indirectly this caused serious prejudice to Australian and Brazilian interests, although it was not possible to quantify this.³¹

The subsequent events in this complaint, indicate the seriousness with which other Contracting Parties view the export subsidy system of the CAP. After the Panel finding of serious prejudice or threat of serious prejudice to Australian and Brazilian interests, the GATT established a Working Party to discuss the possibility of the EEC limiting its subsidization of sugar exports.³² Article XVI:1 provided the legal basis for the Working Party, it states,³³

"In any case in which it is determined that serious prejudice to the interests of any other contracting

³⁰ BISD 26th Supp.290, 318-319. (The findings of the Panel in the Brazilian complaint are similar to those reached by the Panel in the Australian complaint.)

³¹ Idem. paragraph (g) of the conclusions of the Panel.

³² BISD 28th Supp.80.

³³ BISD Vol.IV (1969) 26.

party is caused or threatened by such subsidization, the contracting party granting the subsidy shall, upon request, discuss with the other contracting party or parties concerned or with the CONTRACTING PARTIES, the possibility of limiting the subsidization."

The EEC representative argued that it had complied with the obligations of Article XVI:1 and that the export refund system was limited by the levies imposed on EEC producers of sugar.³⁴

Using Article 25 of the Havana Charter,³⁵ some members of the Working Party argued³⁶ that the EEC, rather than its producers, had a positive obligation to limit the effects of the subsidization. The majority of the Working Party concluded that the EEC had not advanced any meaningful possibility of limiting the subsidization and their failure to do so, indicated that the threat of serious prejudice, found to exist by the GATT panels, would continue.³⁷ It is unfortunate that further discussion of this question was hampered by differences of opinion in the Working Party over the interpretation of the mandate given by the GATT Council.³⁸

The discussion on the use of Article XVI:3 indicates the nature of the conflict of interest between domestic agricultural policies and the rules of GATT. The 1955 Review Session removed domestic price stabilization schemes from the ambit of Article XVI:3. The

³⁴ BISD op cit n33, 81.

³⁵ Article 25 of the Havana Charter was the basis of the wording of Article XVI GATT.

³⁶ Op cit n33, 83.

³⁷ Ibid, 89-90.

³⁸ BISD 29th Supp.82.

effect of this was to shift the emphasis away from a total prohibition on export subsidies towards an acknowledgement of, and an attempt to control, the use export subsidies.³⁹ However, since progress in this area is dependent on a dispute between two or

The definitional problems of Article XVI:3 were not solved by the 1979 Code on Subsidies and Countervailing Duties, yet one should not dismiss the potential value of the Code.⁴⁰ It provides a workable compromise between the various participating countries and it does update the 1960 GATT list of prohibited export subsidies.⁴¹ However, it provides no effective rules for regulating export subsidies in the area of primary products, and does not adequately deal with the inescapable problem of causation in Article XVI:3. Obviously given the current economic climate, stringent rules on export subsidies are not possible. The example provided by the dispute on EEC refunds on the export of sugar and its aftermath is important. While recognising that the EEC actions did constitute a threat of serious prejudice to Australian and Brazilian interests, the EEC was unwilling to take a constructive role in the subsequent Working Party on subsidy limitation, despite the clear wording of Article XVI:1 on this question. This reticence stems from the result which could have been achieved in the Working Party, international interference in domestic agricultural policies. that any progress should be balanced and reciprocal. This would make the necessary political commitment to

Progress in this area will not be on the basis of a new agreement prohibiting the use of export subsidies in any form, since such an

³⁹ Interpretative notes ad Article XVI:3 paragraph 2. BISD Vol.IV (1969), 68.

⁴⁰ See Seyoum B. "Export Subsidies under the MTN" (1984) 18 JWTL 512; Phegan C. "GATT Article XVI:3, Export Subsidies and Equal Shares" (1982) 16 JWTL 251; Low P. "Definition of Export Subsidies in GATT" (1982) 16 JWTL 375.

⁴¹ See Low op cit n41, 375, 388-90. of the Code.

agreement would be difficult to negotiate and time consuming. Rather, progress should be through the avenues already provided by the GATT, and especially by Article XVI:1. However, since progress in this area is dependent on a dispute between two or more Contracting Parties, a new role should be found for the Committee on Subsidies established by the 1979 Code.⁴² The Committee could set up specific product sub-committees to examine the use of export subsidies by the Contracting Parties in that product. The sub-committees would examine the use and effect of export subsidies and concentrate on measures to limit the use of subsidies. Given the variegated nature of agricultural support in the Contracting Parties, the recommendations of all the product sub-committee would mean that there would be a form of reciprocity in any effort to limit the use of subsidies. Products on which one Contracting Party granted an export subsidy may decline in production as a result of limiting the use of subsidies. This decline would be offset by an increase in production for a product which another Contracting Party removed or limited a subsidy it granted.

Progress in the area of export subsidies will be slow, given the prevalence of these measures. However the proposal made above seeks to establish that any progress should be balanced and reciprocal. This would make the necessary political commitment to such reform a little more realistic.

⁴³ See Appendix A.

⁴² BISD 26th Supp.75 — Article 16 of the Code.

Article XIX, Emergency Action on Imports of Particular Products.⁴³

According to the wording of Article XIX, three conditions must be satisfied before a Contracting Party may invoke the safeguard clause. There must be;

- (i) an increase in the level of imports;
- (ii) this increase in imports is attributable to
 - (a) unforeseen developments; or,
 - (b) the effect of GATT obligations; and
- (iii) the increased level of imports cause or threaten serious injury to domestic producers of like or directly competitive products.

It is important to examine each of these conditions in turn.

Under (i) it is not necessary to show that there has been an absolute increase in the level of imports. The condition is satisfied merely by showing that there has been a relative increase in imports. As such, this is a potentially dangerous device given the current economic conditions. Its availability for protectionist purposes is constrained by the subsequent conditions and other provisions of Article XIX.

The second condition relates to the aspect of causation, the level of imports must be due to unforeseen developments or the effect of GATT obligations. But what does the phrase 'unforeseen developments' encompass? An early GATT Working Party report, realising the difficulty of interpreting this provision, offered the following as a potential definition,⁴⁴

⁴³ See Appendix A.

⁴⁴ Cited in Jackson J. World Trade and the Law of GATT (1969) 560.

"unforeseen development should be interpreted to mean developments occurring after the negotiation of the relevant tariff concession which it would not be reasonable to expect that the negotiations of the country making the concession would and should have foreseen at the time when the concession was negotiated."

From this definition, it is possible to conclude that any increase in imports can be attributed to unforeseen developments. Indeed when examining the interpretation and application of Article XIX, one may conclude that the benefit of the doubt, on the question of unforeseen development, seems to go to the Contracting Party invoking Article XIX.⁴⁵

The definition of this phrase gives an indication of what is covered by the phrase 'effect of GATT obligations'. As stated above, it obviously relates to tariff concessions, but the preparatory work clearly indicates that this phrase has a broader ambit; it also includes the elimination or reduction of quantitative restrictions. Moreover, given the nature of the third condition, which is assessed by the invoking Contracting Party, it seems reasonable to conclude that Article XIX could be used to protect domestic producers at the expense of imports.

However, GATT practice in this area suggests that such a use is rare, this may be attributable to the provisions of Article XIX(2) and (3). These conditions relate to the procedure for using safeguard measures. Generally speaking, advance notice must be given of a Contracting Parties intention to use Article XIX. This serves to afford other Contracting Parties, with a substantial interest as exporters of the product concerned, an opportunity to

⁴⁵ Ibid, 559.

consult before the measures are implemented. If as a result of the consultation, no agreement is reached between the Contracting Parties, Article XIX:3 allows a Contracting Party to use the safeguard clause. It also permits other affected Contracting Parties, having a substantial interest in the matter, to withdraw substantially equivalent concessions.

It is this aspect of Article XIX which contributed to the increased use of safeguard measures outside the framework of Article XIX in particular and GATT in general. As Tumlir states,⁴⁶

"It is destructive of the spirit of reciprocity for a country in an emergency to be obliged to pay for taking bona fide temporary action to negotiate such repayment and to be threatened with retaliation if it does not offer enough.

The application of the principles of mfn treatment and reciprocity, have led to an increase in such safeguard measures as voluntary export restraint agreements(VRA's) and orderly marketing arrangements(OMA's). Both of these types of safeguard measures fall outside the scope of GATT supervision.

These measures are primarily motivated by protectionist considerations in the importing countries. Since they are negotiated bilaterally, they open the way for discrimination in international trade. They are accepted by exporting countries to ensure they maintain at least some level of exports to the importing country concerned. As mentioned in Part I of the paper in the discussion of the principle of Community preference, the safeguard clause in each COM is rarely invoked. As the body responsible for administering the common organizations, the

⁴⁶ Tumlir J. "A Revised Safeguard Clause for GATT." (1973) 7 JWTL 404, 408.

Commission enters into negotiations with exporting third countries and informs them of its intention to apply the safeguard clause. As Sack observes,⁴⁷

"If the third country declares its willingness to limit its exports and if it is able to demonstrate its ability to ensure its declarations are complied with, there is no longer any reason for the Commission to apply the safeguard clause."

When such declarations are forthcoming rather than invoke the safeguard clause, the Community concludes a VRA with the country concerned. The Community by concluding such agreements are in breach of their GATT obligations.⁴⁸

Recognising the problems associated with Article XIX and the dangers posed by the proliferation of VER's and OMA's, the Tokyo Declaration, listed as one of the aims of the negotiations,⁴⁹

"[to] include an examination of the adequacy of the multilateral safeguard system considering particularly the modalities of application of Article XIX, with a view to furthering trade liberalization and preserving its results."

Despite the extensive negotiations conducted during the Tokyo Round, it ended without the conclusion of a comprehensive code

⁴⁷ Sack "Commission powers under the safeguard clauses of the COMs" (1983) 20 CML.Rev. 757, 763-764.

⁴⁸ The Community has concluded a member of VERs for agricultural products such as beef, sheepmeat and goatmeat and apples. See for example the VERs concluded in the sheepmeat and goatmeat sector with Hungary (OJ L 50/6 1981), Bulgaria (1982 OJ L 31/12) and Czechoslovakia (1982 OJ L 204/29).

⁴⁹ BISD 20th Supp.19, paragraph 3(d) of the Declaration.

on safeguard measures. Some measure of agreement was however forthcoming. It was recognised that:⁵⁰

- the use of safeguard measures must be subject to greater international discipline; and
- this discipline should involve the acceptance of two principles; firstly that the measures should remain limited in scale and duration and; secondly, safeguard measures must be accompanied by efforts at structural adjustment to cure the cause for safeguard measures in the first instance.

The issue on which the negotiations floundered and on which the EEC argued for, was that of selectivity.⁵¹ The EEC argued that selectivity would allow measures which would be directed against the offending exporter. The less developed Contracting Parties, amongst others, were unwilling to countenance the abolition of the mfn requirement inherent in Article XIX.

The failure of the Tokyo Round negotiations in relation to safeguards did not spell the end of the GATT's efforts to come to terms with the problem. The Ministerial Declaration issued after the 38th session of GATT Ministers⁵² recognized the importance of establishing an improved safeguard system. To this end they listed six requirements which a comprehensive understanding on safeguards should contain.⁵³

⁵⁰ Se Merciai "Safeguard Measures in GATT." (1981) 15 JWTL 41.

⁵¹ Se Schultz and Schumacher "The Reliberalization of World Trade." (1984) 18 JWTL 206.

⁵² BISD 29th Supp.9.

⁵³ BISD 30th Supp.216, 219-220.

- "(i) Transparency;
- (ii) Coverage;
- (iii) Objective criteria for action including the concept of serious injury or threat thereof;
- (iv) Temporary nature, degressivity and structural adjustment;
- (v) Compensation and retaliation; and
- (vi) Notification, consultation, multilateral surveillance and dispute settlement with particular reference to the role and functions of the Safeguards Committee."

The proposal below is an attempt to encompass these six requirements. The proposal recognises the need to accommodate bona fide actions under Article XIX and establish a procedure whereby VRA's and OMA's will come within the ambit of multilateral surveillance.

A CODE ON SAFEGUARD MEASURES.

The Contracting Parties to the GATT.

Recalling the objectives of the General Agreement on Tariffs and Trade;

Recognising that Article XIX of the GATT provides a framework for the invocation of safeguard measures;

Realising that problems with the application of Article XIX has led the Contracting Parties to have recourse to measures outside the framework of the GATT;

Determined to end the practice of some Contracting Parties to have recourse to such measures as Voluntary Export Restraint Agreements and Orderly Marketing Arrangements;

Resolved to adhere to this Code to regulate the use of safeguard measures;

have agreed as follows:

Article 1 Conditions necessitating the use of Safeguards.

1. Contracting Parties shall invoke the provisions of this Code if, and only if, the following conditions are satisfied;
 - (a) there is a serious disturbance or a threat of serious disturbance in the domestic market of that Contracting Party;
 - (b) the serious disturbance or threat of serious disturbance must be such as to cause or threaten to cause grave impairment to the objectives of any domestic industrial or agricultural policy;
 - (c) the serious disturbance referred to in sub-paragraph (a) must result from an increase in the market share of a product which is similar to or directly competitive with domestic production; and
 - (d) the conditions specified above must arise from the binding of a particular tariff concession at a rate other than zero.
2. Contracting Parties intending to invoke safeguard measures shall inform the GATT Secretariat of their intention, at least 30 days before they are implemented. Such notification must include a list of both;
 - (a) the proposed measures and the products concerned; and,
 - (b) the Contracting Parties against which such measures shall be used.
3. Upon receipt of this notification, the GATT Secretariat shall establish a Panel, as quickly as possible. This Panel shall have the following functions;
 - (a) to determine whether the conditions specified in sub-paragraph 1 of this Article are satisfied in full;

- (b) to determine whether the proposed measures are adequate to deal with the situation; and
- (c) to determine whether the proposed measures will have effects beyond that necessary to deal with the serious disturbance or the threat thereof.

The Panel shall reach its decision on these questions at least seven days before the intended introduction of safeguard measures.

Article 2 Safeguards and Selectivity.

Given a positive decision by the Panel established by virtue of Article 1(3), a Contracting Party may lawfully adopt safeguard measures. Provided the conditions of Article 3 are satisfied, the safeguard measures may be adopted against selected Contracting Parties.

Article 3 Conditions Governing the use of Selectivity.

- 1 Selective safeguard measures shall be permissible if each of the following conditions are satisfied;
 - (a) if the safeguard measures are temporary in nature. The proposed measures should not be in force for longer than seven years;
 - (b) if the safeguard measures are degressive in nature. Such measures should be scaled down at the end of their third year of application. Further reductions should occur at the end of each subsequent year given the requirement that such measures shall cease to exist seven years after their introduction;
 - (c) if the safeguard measures are accompanied by a plan leading to the structural adjustment of the product sector which necessitated the introduction of the measures. This plan shall be examined by a Panel to

(a) determine whether it will effectively deal with the problems of the affected sector within the time period specified in paragraph (a) of this article; and finally

(b) (d) if the safeguard measures also provide for adequate consultation with the affected Contracting Party or Parties.

2 Pending the acceptance of these requirements by the Contracting Party concerned and the approval of the Panel, especially on the structural adjustment plan, selective safeguard measures shall enjoy temporary validity. On acceptance of the requirements such measures shall have full legal validity.

Article 4 Non-selective Safeguard Measures.

Given the following situation;

- (a) a negative decision by the Panel established by virtue of Article 1(3); or
- (b) the non-acceptance by the Contracting Party invoking the safeguard measures of the requirements of Article 3(1); or
- (c) the non-approval by the Panel of the requirements of Article 3(1) and especially Article 3(1)(c).

A Contracting Party may still invoke safeguard measures. Such measures shall not have selective application and they shall be subject to the provisions of Article 5.

Article 5 Conditions governing the use of non-selective measures.

The following provisions shall govern the use of safeguard measures invoked by virtue of Article 4;

(a) The Contracting Party which invoked the safeguard measures shall afford adequate opportunity for other Contracting Parties to consult with it on the operation of such measures.

(b) The Contracting Party or Parties against which safeguard measures have been invoked shall be entitled to compensation. This shall be paid by the Contracting Party invoking the measures and shall be equal to 90% of the accepted import value of the product concerned in the relevant market. The import value shall be the value of imports in the full year preceding the use of safeguard measures. The level of compensation shall decline in each subsequent year to the following amounts; 50%, 30%, 20% and finally 10%. Compensation shall cease to be payable five years after the introduction of the safeguard measures.

(c) In the event that three or more Contracting Parties are affected by the use of safeguard measures, or if compensation has not been paid, the Contracting Parties affected by the use of safeguard measures shall be entitled to withdraw substantially equivalent concessions.

(i) A Contracting Party shall be deemed to be affected if it has a market import share greater than 7.5%;

(ii) substantially equivalent concessions shall be defined as the withdrawal of concessions to the accepted value of trade affected by the use of safeguard measures;

(iii) Contracting Parties using this provision should strive to ensure that the concessions withdrawn relate as closely as possible to the product sector in which the Contracting Party has invoked safeguard measures.

- 2 Any dispute over the interpretation and application of the first paragraph of this Article shall be referred to and resolved conclusively by the Safeguards Committee.
- 3 Taking into account the determination of all Contracting Parties to control the use of safeguard measures and given the acceptance of the Contracting Parties of the need for consultation, compensation and retaliation, any problems with the application of this Article shall be decided in favour of the Contracting Parties who are subject to the measures, unless the Contracting Party invoking the safeguard measures persuades the Committee otherwise.

Article 6 Breach of the Conditions of Selectivity.

- 1 In the event of the selective safeguard measures provided for in Articles 2 and 3, failing to comply with the provisions of Article 3 once they are introduced, such measures shall be deemed to be applied under Article 4 and become subject to the provisions of Article 5.
- 2 The Safeguards Committee shall keep all safeguard measures under review and shall determine annually whether selective safeguard measures maintain their compliance with the provisions of Article 3(1).

Article 7 Control of the existing situation.

- 1 Given the widespread use of safeguard measures which fall outside the framework of Article XIX GATT, the following provisions shall apply to such measures.
- 2 All Contracting Parties shall notify the Safeguards Committee of measures they are subject to and measures which they

impose. This notification shall occur within 90 days of this code entering into force. When such measures have been notified to the Safeguards Committee, it shall establish specific sector sub-committees to examine these measures.

- 3 The Sectoral Sub-Committees shall report on the effects of these measures within 180 days of their establishment. In their reports, they shall make recommendations on how the existing situation could be remedied. Specifically, it will report on whether any of the measures notified fulfil the conditions of Article 1(1) or Article 3(1).

Article 9 The Panels.

- 4 Contracting Parties, using safeguard measures which fall outside the framework of Article XIX and which have been notified to the Safeguards Committee, on the recommendations of the Sectoral Sub-Committees, shall have the following options;

- (a) to abolish the measures in question;
 - (b) to submit the measures to the provisions of this Code;
- or,

- (c) to continue to apply the measures.

If the Contracting Party chooses option (c), the Contracting Party or Parties affected by such measures shall have the rights guaranteed by Article 5 of this Code.

No safeguard measure may be invoked by a Contracting Party.

Article 8 The Developing Country Clause.

- 1 The provisions of this Code shall not apply to the use of safeguard measures by developing countries.
- 2 Developed Contracting Parties shall endeavour, recalling the objectives of Part IV of the General Agreement, not to apply selective safeguard measures against developing countries.

- 3 Taking into account the rapid development of some developing countries, the Safeguards Committee shall determine whether a particular developing country, given its rate of economic growth and export performance, no longer qualifies as a developing country. If the Safeguard Committee decides a particular developing country has graduated, that country shall henceforth apply the provisions of this Code.

The Safeguards Committee shall consider this question, only, if asked to by at least five Contracting Parties.

Article 9 The Panels.

- 1 The Panel referred to in Article 1(3) and Article 3(1)(c) shall be established by the GATT Secretariat. It shall comprise of a group of three economic analysts. It shall not include representatives of either the Contracting Party invoking the measures or any Contracting Party likely to be affected by the use of such measures.
- 2 The decisions of the Panels shall be published.

Article 10 Final Provisions.

- 1 No safeguard measure may be invoked by a Contracting Party unless it fulfils the requirements of this Code.
- 2 The dispute resolution procedure provided for in Article 5(2) shall not prejudice recourse by the Contracting Parties to the GATT, to Articles XXII and XXIII of the General Agreement.

In recognition of the deficiencies of Article XIX, and the aim of most VERs, Article 2 of the proposal allows for the introduction of selective safeguard measures. These measures will be subject to the fulfilment of certain specified conditions. The proposal seeks to include one of the major reasons for the growth of VER's and satisfy the concerns of developing countries over the use of selectivity in safeguard measures. The Chairman of the GATT Safeguards Committee has recognised that,⁵⁴

"The existence of such actions [i.e. VERs] and their cumulative effect poses a serious threat to the multilateral trading system and it is a matter of importance to generate the political will to follow international disciplines in order to prevent further erosion of the GATT system."

The international discipline provided by Article XIX has proved to be ineffective. The proposal for a new safeguards code remedies this ineffectiveness by addressing the problems of Article XIX. The adoption of this code constitutes the way forward for the GATT, since it would meet, and cope with, the "serious threat to the multilateral trading system".

Article XXVIII Modification of Schedules

Tariff negotiations and the resulting concessions lie at the heart of the GATT system. To enable the Contracting Parties to renegotiate the concessions granted provision is made in Article XXVIII for

⁵³ See Dam K. *The GATT Law and International Economic Organizations* (1970) Ch.6 Technical Tariff negotiations. Article XXVIII BISD Vol.IV (1969) 46-49.

⁵⁴ Article XXVIII:1.

⁵⁴ BISD 30th Supp.216 219.

two types of negotiations; open season negotiations; and, out of season negotiations.⁵⁵

Open season negotiations may lead to either the modification or withdrawal of concessions in two situations. Firstly, not earlier than six months before the end of a period of firm validity, Contracting Parties may elect to modify or withdraw a scheduled concession from the first day of the next period of firm validity. Secondly, a Contracting Party may elect at any time during one period of firm validity to reserve the right to take action during the next period of firm validity. According to the wording of Article XXVIII,⁵⁶ open-season negotiations must be held with the Contracting Party with whom the concession was originally negotiated, with any Contracting Party deemed to have a principal supplying interest, and any other Contracting Party having a substantial interest in the concession.

As the Interpretative notes to Article XXVIII suggest,⁵⁷ the need for consultation is to ensure that Contracting Parties having the largest share in trade affected by the concession have an effective opportunity to protect their interests. The absence of a concise definition to the phrase 'substantial interest' effectively means that negotiations are carried out with all Contracting Parties, however small their interest in the matter. Instead of the trilateral negotiations anticipated by Article XXVIII, negotiations are usually multilateral. The purpose of the consultation is to reach agreement on the effects of the modification or withdrawal

⁵⁵ See Dam K. The GATT: Law and International Economic Organizations (1970) Ch.6 Technical Tariff negotiations. Article XXVIII BISD Vol.IV (1969) 46-49.

⁵⁶ Article XXVIII:1.

⁵⁷ BISD Vol.IV (1969) 73-75.

of the concession and to provide for compensation.⁵⁸ The wording of Article XXVIII suggests that it cannot be used for protectionist purposes. It provides that Contracting Parties shall endeavour,⁵⁹

"...to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this Agreement prior to such negotiations."

In the event of the Contracting Parties failing to agree, Article XXVIII:3 permits the modification or withdrawal of a concession. This is at the price of the withdrawal of substantially equivalent concessions by either the party with whom the concession was initially negotiated, or the Contracting Party having the principal supplying interest, or the Contracting Party deemed to have a substantial interest, or all three. This provision raises the problem of defining what is meant by "substantially equivalent concessions".

This phrase was the subject of a dispute between the EEC and the United States, a dispute usually referred to as the 'Chicken War'.⁶⁰ The dispute arose due to the introduction of the EEC import regime for poultry, the effect being a trebling of the import fee for poultry.⁶¹ Although the US claim was based on Article XXIV:6, the procedure set forth in Article XXVII was incorporated by reference.⁶² The US case turned on its ranking as the principal

⁵⁸ Article XXVIII:3(b).

⁵⁹ Article XXVII:2.

⁶⁰ See Walker H. "Dispute Settlement and the Chicken War." (1964) 58 AJIL 671.

⁶¹ Ibid, 673-77.

⁶² Ibid, 677-82.

supplier of poultry, this would enable the United States to withdraw 'substantially equivalent concessions'. The dispute referred to GATT,⁶³ was not on the question of the interpretation of this provision but rather with a determination of the value of US poultry exports. A valuable opportunity was lost to give an authoritative interpretation of this phrase. The end result was that 'substantially equivalent concessions' entail the modification or withdrawal of concessions to the same value as those affected by the modification or withdrawal of concessions by the concerned Contracting Parties.

Article XXVIII:4 provides for 'out of season' negotiations. These may be carried out at any time provided the necessary authorization has been given by the Contracting Parties.⁶⁴ Such authorization is granted in very limited circumstances, mostly related to development purposes. Since the rules for such negotiations are less favourable than those relating to open season negotiations, the provisions of Article XXVIII:4 are rarely invoked by developed countries.

As the section on Article XI indicated, the EEC wishes to impose restriction on the importation of animal feed proteins/cereal substitutes.⁶⁵ When discussing this question the point was made that the EEC could not use Article XI but should use Article XXVIII. As the examination of this Article indicates should the EEC wish to modify or withdraw this concession, provision will have to be made for compensatory adjustment, or if no such

⁶³ BISD 126th Supp.65.

⁶⁴ Ad Article XXVIII (Interpretative Note) BISD Vol.IV (1969) 74-75.

⁶⁵ See Chapter 1 of this part, Article XXVI, The Customs Union Exception.

provision is agreed, substantially equivalent concessions will be withdrawn. The scope for unilateral action is therefore limited.

The introduction of the Harmonized Commodity Description and Coding System (HS) implies a considerable change in the GATT schedules of tariff concessions.⁶⁶ As such it offers the EEC an opportunity for the modification of existing tariff concession. As the GATT study recognises,⁶⁷

"In order to avoid complicating the introduction of the Harmonized System, Contracting Parties should endeavour to avoid modifying or renegotiating their bindings for reasons not associated with the system."

The alteration of existing bindings will, therefore, only take place where their maintenance would result in undue complexity, rather than a desire by one of the Contracting Parties to raise the level of protection afforded to its domestic producers.

In conclusion, it is worth discussing the concept of binding or bound items relates to an agreement establishing a given rate of customs duty on particular products.⁶⁸ The fundamental obligation in relation to bound duties is not to raise them above the level agreed upon, even when the effects of the increase would not be to cause an escalation in the level of protection.⁶⁹ The problem of binding is relevant to the Commission proposal to

⁶⁶ BISD 30th Supp.17.

⁶⁷ Ibid,18.

⁶⁸ See GATT Article II BISD Vol.IV (1969) 3-5.

⁶⁹ Ibid, Article II(1).

impose a tax on oils and fats.⁷⁰ Such a tax could be in contravention of the GATT as the GATT imposes a standstill provision on the further taxation of bound items. An exception to this provision allows for,⁷¹

"a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III in respect of the like domestic product."

Since the purpose of the proposed tax on oils and fats is to increase the consumption of both olive oil and butter, it is obvious that a tax on oils and fats would also have to be enforced on domestically produced olive oil and butter. This would defeat the purpose of the tax.

The GATT and a Common Agricultural Trade Policy

The foregoing analysis of the GATT provisions indicate the framework under which a Common Agricultural Trade Policy would operate and under which the CAP does operate. However, disquiet remains over the role of GATT in the agricultural arena, and the review undertaken reflects certain elements of this disquiet.

The problems associated with the use of quotas in Article XI have forced Contracting Parties to adopt more subtle methods to protect their domestic agricultural producers. In most cases this has been accomplished through the use of non-tariff barriers. In recognition

⁷⁰ See E.C.Bulletin Supp.4/83 Adjustment of the CAP, 17.

⁷¹ Article II;1 The Commission proposal previously noted would be in conformity with the international commitments of the Community, according to the Commission.

of the problem presented by the use of these measures the GATT has taken its first step to control the problem. In relation to the EEC, the problems presented by the use of non-tariff measures has been dealt with by the internal harmonisation of these measures. However, the EEC continues to employ non-tariff barriers in the limitation of imports, the most effective of these measures being the variable import levy. The definitional problems which plague Article XVI:3 were not ameliorated by the Code on Subsidies. Moreover the original thrust of this Article has been deflected, thereby blunting its impact. The requirements of reciprocity and non-discrimination have forced some Contracting Parties outside the framework of the GATT, through their inability to use Articles XIX and XXVIII effectively. The proliferation of non-tariff barriers to agricultural trade and the increasing prevalence and market relevance of VRA has led to some response from the GATT, albeit a limited response.

The experience of the GATT in relation to agriculture reflects the conflicts of interest previously alluded to, between the economic, social and political forces which motivate the involvement of governments in agriculture and the economic, social and political interests advocating free trade. One may conclude from this that the meagre success of the GATT is due to its tampering with aspects of domestic agricultural policy rather than tackling the source of these domestic policies. As Warley concludes,⁷²

"All members of the international community are aware that the world trading system could be impelled along a protectionist course as the cumulative result of unwitting and selfish national agricultural interventions and that such a development would be damaging to national

⁷² Warley T. "Western Trade in Agricultural Products" (in ed. Shonfield, International Economic Relations of the Western World 1959-71 Volume 1 Politics and Trade) 287, 402.

interests. All are aware that the proper exercise of national sovereignty and the protection of national interests require the sharing internationally of the benefits as well as the burdens of managing both change and stability within the world agricultural economy."

It is to a discussion of these efforts to establish stability and provide for change that the next chapter turns.

In the context it is essential not only to gauge the nominal level of protection but also the effective rate of protection² since the latter is of more relevance to agricultural exporters to the EEC. It would be useful at this stage to recall some of the points previously made. The development of the CAP has led to the creation of a complex hierarchy of import measures.³ At the top of this hierarchy are products which have traditionally formed the core of the CAP, cereals, sugar and dairy products. Protection is achieved through the use of variable levies, which insulate for

1. See Table 1.2 "Agricultural Protectionism: An analysis of international economic effects and options for institutional reform" (1980) UNCTAD Series G 1, 2.

2. See Table 1.3 "Tariff Protection in Industrialised Countries" (1980) UNCTAD Series G 1, 3. (See also 1971 book by same author with same title).

3. See Table 1.4 of this paper -- The external environment.

CHAPTER 3: NATIONAL AGRICULTURAL POLICIES, INTERNATIONAL TRADE AND THE GATT.

The nature of the problem

"From a policy point of view, both the existing level and the trend of protection are questions of key importance in any discussion of agricultural production and trade. In this respect, the level and trend of agricultural protection in the markets of some developed countries have apparently been such as to have seriously harmed the position of foreign exporters."¹

If the agricultural policies of the Contracting Parties and more especially the CAP, suffer from this shortcoming, it is obvious that international efforts to ameliorate the situation are more than justified. Therefore, it is important to assess the degree of protection afforded by the CAP.

In this respect it is essential not only to gauge the nominal level of protection but also the effective rate of protection² since the latter is of more relevance to agricultural exporters to the EEC. It would be helpful at this stage to recall some of the points previously made. The development of the CAP has led to the creation of a certain hierarchy of import measures.³ At the top of this hierarchy are products which have traditionally formed the core of the CAP, cereals, sugar and dairy products. Protection is accorded through the use of variable levies, which insulate for

¹ Yeats A.J. "Agricultural Protectionism: An analysis of international economic effects and options for institutional reform." (1983) UNCTAD Review (3) 1, 3.

² See Balassa B. "Tariff Protection in Industrialised Countries." (1965) 73 J. Pol.Econ.573. (See also 1971 book by same author with same title.)

³ See Part I of this paper — The external environment.

domestic agricultural producers.⁴ However, these levies have a destabilising effect on world trade.

Yet the variable levy is not the only means of protection. For example, in relation to cheese there are health and safety regulations to be complied with. The introduction of the Tokyo Round Code on Technical Barriers to Trade will enable such regulations to be subject to international standardisation, surveillance, and consultation. However, as already recognised, Article 2:2 of the Code allows for exceptions when the international standards are inappropriate for such reasons as the protection of public health. It should also be mentioned that imports of cheese from countries as diverse as Canada,⁵ Australia,⁶ New Zealand,⁷ and Finland⁸ are subject to quotas. Quotas which are set well below the export capacity of the various countries concerned and conditional on observance of the minimum import price.

The net effect of these provisions is an effective rate of protection of some 276%⁹ and the elimination of efficient agricultural producers, such as Australia and New Zealand, from the Community market. Consequently such exporters are forced into a search for alternative markets, a search which is hampered by the use of export subsidies by the EEC to dispose of surplus

⁴ Yeats op cit n 1, 6-7 (Table 2); see also Sampson and Yeats "An evaluation of the CAP as a barrier facing agricultural exports to the EEC" 59 Am.J.Agr.Econ.99.

⁵ OJ L 71/129 1980.

⁶ 1980 OJ L 71/164.

⁷ 1980 OJ L 71/149.

⁸ 1981 OJ L 359/24.

⁹ Sampson and Yeats op cit n 4.

domestic production. This use of export subsidies by the EEC is perhaps the most trade disruptive aspect of the CAP. The indiscriminate use of such subsidies allows the EEC to penetrate the established export markets of other countries, irrespective of whether the latter are more competitive than the EEC. Once displaced from their established markets, efficient producers may find great difficulty not only locating alternative markets but also re-penetrating their former market, thus magnifying the negative trade impact of the CAP.

Further examples such as fresh meat¹⁰ or citrus fruit¹¹ merely serve to emphasise the points already made. The use of export subsidies, variable levies, and non-tariff barriers by the CAP, raise the effective rate of protection afforded to the EEC producers. The result of this is declining market shares for third countries¹² and in some cases their displacement from traditional export markets. However, the EEC is not alone in the level of protection it affords to its agricultural production. Equally protectionist policies may be found in most developed agricultural producing countries. Japan¹³ is an excellent example of a country where the agricultural policy is even more protectionist than the EEC. In relation to the United States¹⁴ a slightly different picture emerges. 1961 marked the beginning of a process leading to the gradual realignment of internal support price towards prevailing world market price. The 1960's also marked the conversion of the

¹⁰ Yeats op cit n.1, estimates the effective rate of protection to be 165%.

¹¹ Idem, the rate of protection is estimated at 75%.

¹² Tangermann S. "Agricultural Trade Relations between the EC and Temperate Food Exporting Countries" (1979) Eur.Rev. of Agr.Econ.214.

¹³ See Olechowski and Sampson "Current Trade Restrictions in the EEC, U.S. and Japan". (1980) 14 JWTL 220.

¹⁴ Warley " Western Trade in Agricultural Products." in ed Shonfield, 319-22.

United States to a belief in the value of a liberal framework for the conduct of world trade. However, this conversion was not total. For those products which it had no competitive advantage or for which it was uncompetitive its policy remained essentially protectionist.¹⁵

It is interesting to compare the approaches of these three countries to their domestic agricultural policies.¹⁶

"Both the EC and Japan conduct their national economic affairs with a much greater degree of dirigisme than does the United States. More especially ... they regard their domestic agricultural policies as components of a set of integrated industrial regional and social policies designed to secure at a measured pace and by government guidance the kinds of societies they are trying to build."

Warley states that this attitude reflects on their participation in international trade negotiations,

"This philosophy and practice carries over into their international economic relations also. External relationships must be managed in such a way as not to jeopardize the attainment of broad national sectoral and regional development goals ... or to lead to an unplanned degree of dependence on external sources or excessive exposure to externally generated instabilities."

Such an approach entails a pragmatic and gradualist approach to negotiations. In stark contrast the US and other countries, such as NZ and Australia, favour an idealistic and reasonably quick change to the nature of international agricultural trade.

¹⁵ Ibid, 346-347.

¹⁶ Warley T. "Agriculture in International Economic Relations" 58 Am.J.Agr.Econ. 820, 823.

Any approach advocated by the GATT would have to reconcile these two conflicting views on the pace of change. It is against this background that one should consider the GATT attempts to influence national agricultural policies.

GATT ATTEMPTS TO INFLUENCE DOMESTIC AGRICULTURAL POLICY

The Harberler Report.¹⁷

Concerned with developments in international trade, the GATT commissioned a report by a Panel of Experts to consider trends in international trade. The report of this Panel is generally referred to as the Harberler Report.

In their examination of the domestic agricultural policies of the Contracting Parties, the Report recognises two basic elements which form the foundation of all policies;¹⁸ a stabilisation element and a protective element. It goes on to examine the various methods chosen to implement these elements, interventionism; deficiency payments; and finally, external protection. The report recommends that domestic agricultural policies should be based on deficiency payments or as an alternative, interventionism. The report criticises external protection as a source of instability in world trade. It is interesting to note the impact these conclusions had on the formulation of the CAP. The Community based its policy on interventionism in the domestic market and external protection. Therefore it is not surprising that the protection

¹⁷ Trends in International Trade: A report by a Panel of Experts (1958).

¹⁸ Ibid, 67-68.

referred to in the first part of this chapter has occurred. Almost predicting the future course of the CAP, the Report notes,¹⁹

" ... whether or not agricultural protectionism has increased in the highly developed countries, there are two incontrovertible facts. First agricultural protectionism exists at a high level in the most highly industrialized countries; and second the development of production and consumption of agricultural production in such countries has been such as to make net agricultural imports into these countries more and more marginal in relation to their total domestic production and consumption of such products."

The Report notes that the domestic policies of these Contracting Parties were a major factor in restraining world agricultural trade. To ameliorate this situation, the Harberler Report recommended the gradual moderation of agricultural protection through a shift away from price support towards income support. This would be achieved through the introduction of a deficiency payments scheme.²⁰ This transformation of agricultural policy would result not only in greater public awareness of the policy but also stimulation of consumption by reduction of the level of consumer prices.

²¹ EISD 8th. Supp.121.

¹⁹ Ibid, 87.

²⁰ Ibid, 102. Supp.135.

Reaffirming the conclusions of the Harberler Report, the Committee II included that there should be a moderation of agricultural protection.²⁴ However, rather than advocating a

The final result of the submission of the Harberler Report was the establishment of various Committees within the framework of the GATT. In relation to agriculture, Committee II was established with the mandate of:²¹

- assembling data on the use of non-tariff barriers by the Contracting Parties to support domestic agricultural income;
- examining the effects of these measures on international trade in agricultural products;
- considering the adequacy of the GATT rules on non-tariff barriers to trade; and
- suggesting procedures for further consultation between all Contracting Parties on agricultural policy.

Progress within the Committee was through consultation with the Contracting Parties. However, a dispute over the terms of reference of the Committee operated in such a way as to limit its effectiveness. The Committee did note a fundamental difference of opinion between its members over the nature of the GATT.²² Some considered it to be a code of rules of commercial policy. Others maintained that it was basically an instrument for the exchange of mutually advantageous tariff concessions, its provisions being aimed at safeguarding and ensuring the effectiveness of these concessions. This dispute emphasizes the failure of the GATT in relation to agricultural trade. However the dispute did not prevent the Committee from reaching its conclusions.²³

²¹ BISD 8th Supp.121.

²² Ibid, 122.

²³ BISD 10th Supp.135.

Reaffirming the conclusions of the Harberler Report, the Committee concluded that there should be a moderation of agricultural protection.²⁴ However, rather than advocating a change from price support to income support, the conclusions of Committee II recommended a change in the nature of price support.²⁵ For example, it was recommended that prices should be set at a level which was remunerative to efficient producers rather than providing a price for all producers. It was also recognised that this price-setting exercise should take account of the need to increase consumption and to ensure that production would not be encouraged.

The Leutwiler Report

The Committee concluded its work by observing,²⁶

"the balance [of obligations and rights] which countries consider they had a right to receive under the General Agreement has been disturbed. These developments are of such a character that either they have weakened or threatened to weaken the operation of the General Agreement as an instrument for the promotion of mutually advantageous trade. This situation raises the question as to the extent to which the GATT is an effective instrument for the promotion of such trade."

The effect of these conclusions on the formulation of the CAP, like those of the Harberler Report, seem to have been negligible. Although not recommending a shift to income support, Committee II did recommend that certain constraints be placed on price support policies. By establishing a common cereals price which approximated more to the existing German price level rather than the more efficient French level, it is not surprising that the

²⁴ Ibid, 143.

²⁵ Idem.

²⁶ Ibid, 144.

Reaffirming the conclusions of the Harberler Report, the Committee concluded that there should be a moderation of agricultural protection.²⁴ However, rather than advocating a change from price support to income support, the conclusions of Committee II recommended a change in the nature of price support.²⁵ For example, it was recommended that prices should be set at a level which was remunerative to efficient producers rather than providing a price for all producers. It was also recognised that this price-setting exercise should take account of the need to increase consumption and to ensure that production would not be encouraged.

The Committee concluded its work by observing,²⁶

"the balance [of obligations and rights] which countries consider they had a right to receive under the General Agreement has been disturbed. These developments are of such a character that either they have weakened or threatened to weaken the operation of the General Agreement as an instrument for the promotion of mutually advantageous trade. This situation raises the question as to the extent to which the GATT is an effective instrument for the promotion of such trade."

The effect of these conclusions on the formulation of the CAP, like those of the Harberler Report, seem to have been negligible. Although not recommending a shift to income support, Committee II did recommend that certain constraints be placed on price support policies. By establishing a common cereals price which approximated more to the existing German price level rather than the more efficient French level, it is not surprising that the

²⁴ Ibid, 143.

²⁵ Idem.

²⁶ Ibid, 144.

predictions of over-production and unreasonable prices to consumers would occur within the framework of the CAP.²⁷

A future work programme agreed in 1967 established another Agricultural Committee.²⁸ Its mandate was to examine the problems of the agricultural sector and prepare the way for future consideration of positive solutions to the agricultural problem. However, its deliberations did not lead to any significant improvements in the situation.²⁹

The Leutwiler Report

The latest GATT effort to influence international trade was presented in March 1985.³⁰ Entitled "Trade Policies for a Better Future — Proposals for Action", it analyses the international trading environment during the 1970's and early 1980's and indicates how the problems facing the international trading system can be dealt with.³¹

In relation to agriculture, the report recognises the failure of some Contracting Parties to live up to the GATT rules from the beginning, has led other Contracting Parties to find new ways to

²⁷ See Part I of this paper.

²⁸ BISD 15th Supp.67.

²⁹ BISD 16th Supp.12.

³⁰ GATT Newsletter, Focus 33.

³¹ In the third chapter of the Report (The Way Forward) the group made fifteen recommendations for specific, immediate action to meet the "present crisis" in the trading system.

evade the existing rules. To remedy the situation the report recommends,³²

"Agricultural trade should be based on clearer and fairer rules with no special treatment for particular countries or commodities. Efficient agricultural producers should be given maximum opportunity to compete."

The report advocates the ending of the US agricultural waiver as the first step in the process of establishing "clearer and fairer rules".

The Report's recommendations are in accordance with the programme of work and priorities for GATT in the 1980's. Paragraph 7(v) of the 1982 Ministerial Declaration urges the Contracting Parties to,³³

"bring agriculture more fully into the multilateral trading system by improving the effectiveness of GATT rules, provisions and disciplines and through their common interpretation; to seek to improve terms of access to markets; and to bring export competition under greater discipline."

Given past work programmes and the failure to implement the Harberler Report and the conclusions of Committee II, it would be unwise to predict that the conclusions of the Leutwiler Report will lead to any significant change. Perhaps it is only through multilateral negotiations that such change will come.

³² Op cit n 29, Recommendation 2.

³³ BISD 29th Supp.9 11-12. See also BISD 31st Supp.10 (Trade in Agriculture. Without prejudice to other approaches, the Committee on Trade in Agriculture established in 1982 will concentrate on three areas:- (1) all quantitative restrictions and other related measures affecting imports and exports; (2) all subsidies affecting trade in agriculture; and (3) technical barriers to trade.)

MULTILATERAL TRADE NEGOTIATIONS

The Dillon Round³⁴

The significance of this round of tariff negotiations rests not on any of the concessions made but rather on the recognition of other Contracting Parties of the right of the EEC to negotiate on behalf of the member States.

Negotiations in this round were primarily conducted under Article XXIV:6 GATT which provides,³⁵

"If in fulfilling the requirements of sub-paragraph 5(a), a Contracting Party proposes to increase any rate of duty inconsistent with the provisions of Article II, the procedure set forth in Article XXVIII shall apply.

The provision goes on to state that compensatory adjustments shall be made for any increase in bound duties. Although agreements were reached between the EEC and all other Contracting Parties, it was not possible to reach full agreement with the United States. This lack of agreement was due to the desire of the EEC to replace bound duties by variable levies for products to be covered by the CAP. However, a formal agreement was reached noting the lack of agreement and stating that for some products the United States had "unsatisfied negotiating rights".³⁶

³⁴ 1960-61.

³⁵ BISD Vol.IV (1969) 42.

³⁶ These related to a group of products which constituted a large percentage of trade (in terms of volume) i.e. wheat, rice, corn and Sorghum.

Each time the Community enlarges, it has to conduct Article XXIV:6 negotiations. The negotiations on the accession of Greece³⁷ gave rise to a dispute between the EEC and the US about the use of credits.³⁸ The Community contended that account should be taken of the credits created by the fall in duties of the Greek customs tariff due to its alignment with the Common Customs Tariff. This would reduce the level of compensatory adjustment. The United States considered that the credits created should not be taken into account and this argument was accepted by the other Contracting Parties.

The end result of this exercise was the insertion of an Article in the Spanish and Portuguese Acts of Accession which would raise the bound duties of the enlarged common customs tariff. If these increases remain within the limits provided by Article XXIV:5(a) and the requirements of Article XXIV:6, it should prevent a repetition of the arguments which occurred on Greek accession.³⁹ It remains to be seen how the other Contracting Parties will react to this provision, which could have the effect of raising the protective wall around the enlarged EEC.

The Kennedy Round

The possible enlargement of the Community to include the United Kingdom and a change in emphasis in American agricultural trade

³⁷ BISD 30th Supp.168.

³⁸ See COM (83) 508, On certain tariff problems connected with Spain and Portugal accession negotiations.

³⁹ Recent events have shown the weaknesses of this approach. Note the conflict between the EC and the United States, re export of maize to Spain, finally settled in January 1987.

policy were factors in the enactment of the US Trade Expansion Act 1962. This Act effectively inaugurated the Kennedy Round.⁴⁰

Agriculture became, for the first time an integral part of the negotiations. The main focus of these negotiations was the EEC proposal which attempted to bring agricultural products into the mainstream of trade negotiations.⁴¹ The Community's proposal, referred to as either Mansholt II or the *montant de soutien*, involved two elements:⁴²

- a mechanism through which the level of support provided, by each Contracting Party, to its agricultural producers could be measured; and
- a proposal to bind these existing levels of support and that these levels of support provide the basis for future negotiations on agricultural products.

The basis for the proposal was a belief by the Community that governmental involvement in agricultural production, which was universal, resulted in distortions of competition through their interaction on the world market.⁴³

The mechanism for measuring the level of support given to agricultural producers was a comparison of the guaranteed price given to domestic producers and the price for the product on the international market. This simple measurement would provide a base for future negotiations on the level of agricultural support. However, it suffered from two major defects. Firstly, it ignored the protection afforded by tariffs and non-tariff barriers. Secondly, it assumed that the world price represented the cost of production. As such, it ignored the impact which domestic

⁴⁰ See Metzger S. Trade Agreements and the Kennedy Round (1964).

⁴¹ See Evans J.W. The Kennedy Round in American Trade Policy (1971).

⁴² Ibid, 209-210.

⁴³ Warley op cit n 13, 383.

agricultural programmes and the use of export subsidies have on the world price.

The consolidation of the level of support would have led to restrictions being placed not only on domestic agricultural policies. However the use of export subsidies by the Contracting Parties would have been restricted because of the obligation to respect the established negotiated reference price. However, it was the second aspect of the plan that caused most criticism. As Evans notes,⁴⁴

"But what ensured that Mansholt II would meet with violent opposition from the exporters was that the Community proposed that the *montant de soutien* be used not as a basis for further negotiations but as a substitute for them."

In other words, tariff bindings would be replaced by a binding of the negotiated reference price. These prices would be bound against increase for a three year period. After each period, the bindings could be renegotiated to take into account developments in the previous three years, thus offering the possibility of increases.⁴⁵

This provision would have led to the maintenance of the present levels of support and as the agricultural exporters argued, it would have offered no prospect of trade expansion. It was this aspect of the plan which led the United States, who had recently converted to the idea of agricultural free trade, to reject the proposal. In any case the United States representative had been given no authority to enter into such an agreement. While realising that the technical aspects of the '*montant de soutien*' proposal was the main reason for its failure, the significance of the proposal was

⁴⁴ Evans op cit n 41, 210.

⁴⁵ Warley op cit n 13, 384.

that it was an attempt by the EEC to reach international agreement on agricultural policies. Perhaps, it was the thought by other Contracting Parties that the plan merely proposed the internationalisation of the variable levy system at best or the CAP at worst, which led to its poor reception.

The objection of limited trade expansion could be met within the context of the plan by agreeing to bind an agreed level of national self sufficiency rather than the level of support. As such this new binding would offer a chance for significant market growth and in relation to the EEC would offer the opportunity of appreciably reduced budgetary expenditure on market support.

This proposal would enable the EEC to reduce expenditure on those products which it cannot produce efficiently and allow it to conclude agreements with third countries for the supply of agricultural products. It is also possible that provision could be made within such an agreement to allow an increase in the share of developing country exports accepted by developed countries, thereby contributing to their development.

However, the re-activation of the *montant de soutien* proposal, even in a different form, may stand little possibility of acceptance, given the polarization of views on agriculture since the Kennedy Round. As Warley concludes,⁴⁶

" ... on the central issues nothing substantial has been accomplished. Apart from an enhanced understanding of the issues involved, the principal legacies were heightened friction between the major protagonists (the US and the EC) and a polarization of views as to the basic conditions under which agricultural trade should be conducted in the future Agriculture was central for a variety of reasons. It was a touchstone of whether the trend in the

⁴⁶ Ibid, 377.

world trading system was to be towards multilateral liberalism or regional protectionism."

It was to the legacies of the Kennedy Round and the slide into protectionism, that the Tokyo Round of multilateral trade negotiations addressed itself.

The Tokyo Round

The Tokyo Declaration states as one of the aims of the negotiations,⁴⁷

"as regards agriculture, an approach to negotiations which, while in line with the general objectives of the negotiations should take account of the special characteristics and problems in this sector."

Although progress was made in the Tokyo Round, in relation to agriculture the results can only be described as disappointing. This is attributable to several reasons. The first, and most important, reason was the limited mandate given to the Commission. The mandate included the following principles;⁴⁸

- to restrict tariff concessions to products not covered by market regulations;
- to yield no concessions to third countries that would add to the financial burden of handling surplus commodities;
- to resist all attempts to question the principal elements of the CAP.

Reflecting the polarization of views on agricultural trade, another reason for the lack of progress was a series of disputes between the EEC and the United States on important issues. The first of

⁴⁷ BISD 20th Supp 19.

⁴⁸ See Bucholz "The MTN and EEC Agriculture" (in ed. Tracy and Hodac Prospects for agriculture in the EEC (1982).

these related to the very structure of the negotiations on agriculture. Whereas the US argued that industrial products and agricultural products should be treated as inseparable and be subject to the same negotiating process, the EEC argued for the creation of a special Agricultural Committee. The establishment of an Agricultural Committee, undoubtedly a triumph for the EEC, ensured that the CAP would emerge unscathed from the negotiations. It also indicated that the results of the negotiations would be limited.⁴⁹ Further disputes arose over the safeguards negotiations and the re-negotiation of the International Grains Agreements.⁵⁰

The EEC did make some agricultural concessions involving a broad range of countries.⁵¹ Concessions on cheese were made to Australia, Canada and New Zealand. In the meat sector a global quota was established for the benefit of several countries, including Argentina, Uruguay, Romania and Hungary. The apparent liberalism of these agreements has been shattered by a recent GATT complaint against the implementation of one of the global quotas, by Canada.⁵² The GATT panel established found that the EEC had attached a condition to the concession and that, the implementation of this condition had led to the discriminatory application of the quota.⁵³

49 Idem.

50 See "International Grains Agreement" (1968) 2 JWTL 233 and Ali L. World "Wheat Markets and International Agreements" (1982) 16 JWTL 59.

51 Details of the concessions given are contained in COM (79) 514 Final Report on the GATT MTN in Geneva.

52 BISD 28th Supp.92.

53 Ibid, 98-99.

The Tokyo Round marks an important stage in the history of GATT. The conclusion of six codes of conduct, of which the Code on Subsidies and the Code on Technical Barriers to Trade have already been discussed, signifies the intention of the Contracting Parties to make the GATT more relevant to the existing international trade environment. As such, the Tokyo Round recognises the increasing irrelevance of an agreement, drawn up in very different circumstances, to modern trade realities. While the GATT has always attempted to meet developments in the world trading environment, serious concern must be expressed about the relevance of the GATT rules and the fact that not all trading countries are members of the GATT.⁵⁴ In an attempt to make the GATT rules more relevant to agriculture, the Contracting Parties agreed to further develop their cooperation in the agricultural sector and to establish an appropriate consultative framework.⁵⁵

However, no indication was given of what would be discussed within this framework. The Consultative Group of 18 has noted,⁵⁶

"As to the reasons for the differential treatment of agriculture, reference was made to the differences incorporated into the General Agreement itself, the effects of long standing derogations, disagreements as to the interpretation of certain GATT articles, to the existence of residual quantitative restrictions on agricultural products and to the undefined status, in GATT terms, of certain agricultural policy measures."

⁵⁴ E.g. the Soviet Union, China.

⁵⁵ BISD 29th Supp.16-17 (see also 30th Supp.100-106, 31st Supp.209 and 32nd Supp.91).

⁵⁶ BISD 28th Supp.71, 78.

Beyond the Tokyo Round

Recognising the validity of the Consultative Group's conclusions, the 1982 Ministerial Declaration endorsed its findings on agriculture and the GATT.⁵⁷ The Committee on Trade in Agriculture to be established was charged with taking into account the effects of national agricultural policies on the objectives, principles and the provisions of the GATT.

The work of the Committee on Trade in Agriculture would cover:⁵⁸

- trade measures affecting market access and supplies;
- the operation of the GATT as regards subsidies especially export subsidies; and finally
- trade measures affecting agriculture maintained under derogations.

The overall aim of the Committee is to recommend measures leading to greater liberalization in agricultural trade. Taking into account the effects of the United States waiver, these measures should lead to a greater balance of rights and obligations under the GATT.⁵⁹ Past experience, especially that of Committee II, suggests that the results of the Committee's work will neither be spectacular nor will they lead to a radical change in domestic agricultural policies.

Events seem to have overtaken the Committee on Trade in Agriculture with the endorsement at the November 1984 ministerial meeting of the GATT Contracting Parties, of the need for a new round of tariff negotiations. However, given the legacies of both the Kennedy and Tokyo Round and their contribution to

⁵⁷ BISD 29th Supp.16.

⁵⁸ *Idem.* (1985) 19 J.W.I.L. 305.

⁵⁹ See footnotes 23-26.

the liberalization of agricultural trade, it is, suggested that the opportunity for reform presented by such a new round will not be accepted. Evidence for this belief comes not only from past experience but also the recent declaration on the subject by the EC Council of Ministers.⁶⁰ It recognises the importance of the new round in the efforts to achieve a more liberal trading system. However, the Declaration notes that the new round will not be sufficient itself to halt the slide into protectionism. In relation to agriculture the Declaration notes,⁶¹

"As regards negotiations on agriculture in the new round the Community is ready to work towards improvements within the existing framework of the rules and disciplines in GATT covering all aspects of trade in agricultural products both as to imports and as to exports, taking full account of the special characteristics of, and problems in, agriculture."

While recognising the apparent liberalism of this statement, the Declaration continues,

"The Council is determined that the fundamental objectives and mechanisms, both internal and external of the CAP, shall not be placed in question."

One recalls that a similar declaration was made at the beginning of the Tokyo Round and the effect of it was to limit any concrete improvement in the situation of agricultural trade. The question asked at the end of chapter 1 must be reconsidered. Is the GATT a suitable organization for the conduct of world trade in agricultural products? The conclusion reached at the end of this chapter, having considered the nature of the problem and GATT attempts to influence it, is that in relation to agriculture GATT is suffering from the "legacy of a misconception". As Hudec reminds

⁶⁰ Noted (1985) 19 JWTL 305.

⁶¹ Idem.

us when discussing the failure of the GATT in relation to agriculture,⁶²

"The basic miscalculation here seems to have been a failure to anticipate the forces, economic and political that are generated by price support programmes."

Any effort to regulate the international conduct of agricultural trade needs to take these forces into account and it is to this problem that the proposals in the next section address themselves.

Several approaches may be considered as ways of making progress in this area. These include:³

- (i) Free Trade;
- (ii) Agricultural Multilateral Trade Negotiations;
- (iii) Codes of Conduct; and finally
- (iv) International Commodity Agreements.

(i) Free Trade

Recognising the negative effects which domestic agricultural policy have on the stability of world agricultural markets and the efficient allocation of world resources, one possible course of action would be to work towards free trade in all agricultural products. As a proposal this represents something of an ideal situation, however, it helps in the assessment of other proposals. There are several difficulties involved in an acceptance of the doctrine of free trade:

1. Yama A.J. "Agricultural Protectionism: An analysis of international economic effects and options for institutional reform." (1983) UNCTAD Review I.

2. Ibid. 24-29; see also Corbet and Niall "Strategy for the Liberalization of Agricultural Trade" (in ed. Isling and McFarquhar *Agriculture and the State* (1976)); Johnson "Impact of farm support policies on International Trade" (in ed. Corbet and Jackson *In search of a NIO* (1974)); *World Agricultural Trade Barriers* (1976); Waley "World Trade in

62 Hudec R. "GATT or GABB? The future design of the General Agreement on Tariffs and Trade," (1970-71) 80 YLJ 1299, 1349.

CHAPTER 4: A NEW BEGINNING

"As was the case with previous multilateral trade negotiations, no significant liberalization of agricultural trade occurred as a result of the Tokyo Round. Given the consistent failure of such negotiations to make any progress in this area or even to halt the spread of new protectionist measures, it is apparent that a new approach is needed for dealing with international agricultural problems"¹

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¹ Yeats A.J. "Agricultural Protectionism: An analysis of international economic effects and options for institutional reform." (1983) UNCTAD Review 1

² Ibid.24-29; see also Corbet and Niall "Strategy for the liberalization of Agricultural Trade" (in ed. Josling and McFarquahar Agriculture and the State (1976)); Johnson "Impact of farm support policies on International Trade"(in ed. Corbet and Jackson In search of a NIEO (1974)); Nagle Agricultural Trade Barriers (1976); Warley "Western Trade in Agricultural Products," (in ed. Shonfield International Economic Relations of the Western World 1959-71 Volume 1 Politics and Trade) Ch.2.

- given the social, political and economic forces which form the basis of domestic agricultural policies, it would be virtually impossible for any government to convince its agricultural population of the advantages of this solution;
- given the events of the early 1970's and the attitudes of some governments to the interaction of national and international policies, the acceptance of the free trade philosophy would lead to an undue dependence on external sources of supply;³
- given the pattern of trade in unregulated commodities in the early 1970's,⁴ it is assumed that free trade could lead to cycles of surplus and shortage, requiring some international interference to mollify the effects of this; and
- given the existence of countries who regulate their international relations through state-trading, the adoption of a free trade philosophy would have to take into account the effects of these state-trading operations.

(ii) Agricultural Multilateral Trade Negotiations

Any proposal which could make progress would have to satisfy the four concerns which would defeat the proposal for world agricultural free trade. One such proposal would be the establishment of agricultural multilateral trade negotiations. Such negotiations would have two advantages over the current situation. Firstly, they would increase the concessions granted in the industrial sector. Secondly, they would concentrate exclusively on the problems of agricultural trade.

To aid these negotiations a Committee on Agriculture could be established within the framework of the GATT to act as an information gatherer and analyser. The negotiations would concentrate on the present failings of the GATT in the agricultural

³ The oil price rises and the consequent monetary fluctuations.

⁴ The impact of the oil price rises on the prices of other commodities.

area. Recalling the previous discussion on the use of export subsidies, it would be within this framework that the proposed Committee on Export Subsidies would examine the practice of the Contracting Parties in this area and recommend proposals for change. Previous deliberations of the GATT would also be relevant, for example the conclusions of Committee II on price support policy and the conclusions of the 1967 Agricultural Committee on measures affecting imports and production.

This proposal offers the opportunity of genuine progress in the agricultural sphere through focussing, more sharply than before, on the shortcomings of the GATT and how these shortcomings can be rectified. One note of caution should be sounded. All rounds of tariff trade negotiations previously held have rested on the concept of reciprocity. Given the strict requirements of this concept, it is arguable that its application is not relevant in the agricultural area. The Contracting Parties should focus not on achieving full reciprocity, but rather on achieving a balance of rights and obligations within the framework of the GATT.⁵ The acceptance of this more limited, and easily satisfied, criterion could make a substantial contribution to the efficacy of the negotiations. Such negotiations would also meet the criticisms noted of the free trade proposal.

(iii) Codes of Conduct

The results of these agricultural multilateral trade negotiations could be formulated into Codes of Conduct for the Operation of Domestic Agricultural Policy.⁶ These could be negotiated independently of the agricultural multilateral trade negotiations. It would be possible to have a code of conduct on the use of export subsidies in agricultural trade or a code on the use of safeguard measures. The codes would establish a framework for

⁵ BISD 30th Supp.231, 223.

⁶ Warley op.cit. n.2.

the conduct of international trade and supplement the relevant GATT provisions. They could be periodically renegotiated to take account of developments in the agricultural trading environment.

The codes could go further and establish guidelines for the formulation and implementation of domestic agricultural policies. Negotiations should concentrate on the costs of protection inherent in the present policies and the effects of these costs on international trade. The parties to such negotiations would have to take account of the conclusions of the GATT Agricultural Committees and the Harberler and Leutwiler Reports. These documents would be a starting point for the negotiations.

Obvious costs of protection are the increase in the price of products to the consumer and the excess cost of stimulated domestic production. Costs which stem from the nature of the price policies employed by some Contracting Parties. Negotiations should centre on methods to reduce these costs and the principle of comparative advantage, which forms the ideological basis of free trade, could be of some limited application in this area. Negotiations would establish an agreed price which would be remunerative to efficient producers. To ensure that the principle of comparative advantage is implemented, a programme of structural adjustment would have to be negotiated. This programme would enable inefficient producers to either leave farming or achieve efficiency. In the context of the CAP such a programme would alleviate the present financial burden of the market organizations and encourage an increase in consumption. Ignoring the problems of negotiation, the proposal interferes with the economic, social and political interests favoured by domestic agricultural policies. In relation to the CAP, it could lead to the desertion of the countryside and since this forms the basis for some aspects of both the price and structural policy, it is doubtful whether the EEC would accept such a proposal.

One way of avoiding this latter problem has already been indicated. In the context of the discussion of the *montant de soutien* proposal advanced in the Kennedy Round, it was advocated that rather than bind the levels of support, it would be more acceptable to bind an agreed level of self sufficiency. After binding the level of self sufficiency, negotiations would centre on the conclusion of guaranteed access agreements, which would meet the external dependence concerns expressed when considering the free trade proposal. These guaranteed access arrangements could, if any Contracting Party was unduly concerned with the stability/security of supply, become multiannual supply agreements. This reactivation of the *montant de soutien* proposal offers a way forward and it could even serve as a development device allowing a certain percentage growth for the exports of developing countries. This proposal would accord with the policy goals of both the CAP and the EEC's development policy.

However, given the terms of the mandate given by the Council to the Commission at the beginning of the Tokyo Round and the recent Council Declaration concerning the Uruguay Round, it is extremely doubtful whether the EEC would countenance this type of reform of the CAP.

(iv) International Commodity Agreements

One final proposal has yet to be considered. The Community could participate in International Commodity Agreements (ICA's). One undoubted advantage of this proposal over all others is that in relation to ICA's all producing parties are capable of adhering to it. Whereas, in relation to the previous proposals made within the context of GATT, and essentially in relation to temperate-zone products, not all parties in the world trading system are members of the GATT.⁷ The disadvantage of the ICA proposal is that it interferes with the philosophy of GATT which is to allow the free

⁷ E.g. the Soviet Union and China.

play of market forces. This is not be a serious objection, as the GATT record in the agricultural area merely serves to indicate the extent to which agriculture forms an exception to the basic GATT philosophy.

General Elimination of Quantitative Restrictions

It is to a discussion of ICA's, their origin, modalities of operation and scope for progress that the next section of this paper addresses itself. At the end of this discussion, an assessment will be made of the two international institutions discussed and their role in international agricultural trade.

2. The provisions of paragraph 1 of this Article shall not extend to the following:

- (a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the life of the contracting party;
- (b) Import and export restrictions or prohibitions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;
- (c) Import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate:

- (i) to restrict the quantity of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or
- (ii) to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus available to certain groups of domestic consumers free

APPENDIX A — PROVISIONS OF THE GATT

Article XI: General Elimination of Quantitative Restrictions

1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.
2. The provisions of paragraph 1 of this Article shall not extend to the following:
 - (a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;
 - (b) Import and export restrictions or prohibitions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;
 - (c) Import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate;
 - (i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or
 - (ii) to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus available to certain groups of domestic consumers free

- of charge or at prices below current market level; or
- (iii) to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is negligible.

Any contracting party applying restrictions on the importation of any product pursuant to sub-paragraph (c) of this paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such value or quantity. Moreover, any restriction applied under (1) above shall not be such as will reduce the total of imports relative to the total of domestic production as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions. In determining this period, the contracting party shall pay due regard to the proportion prevailing during a previous representative period and to any special factors which may have affected or may be affecting the trade in the product concerned.

Article XIX: Emergency Action on Imports of Particular Products

- 1(a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.
- (b) If any product, which is the subject of a concession with respect to a preference, is being imported into the territory of a contracting party in the circumstances set forth in sub-paragraph (a) of this paragraph, so as to cause or threaten

serious injury to domestic producers of like or directly competitive products in the territory of a contracting party which receives or received such preference, the importing contracting party shall be free if that other contracting party so requests to suspend the relevant obligation in whole or in part or to withdraw or modify the concession in respect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury.

- 2 Before any contracting party shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the CONTRACTING PARTIES as far in advance as may be practicable and shall afford the CONTRACTING PARTIES and those contracting parties having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action. When such notice is given in relation to a concession with respect to a preference the notice shall name the contracting party which has requested the action. In critical circumstances, where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this Article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.
- 3(a) If agreement between interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected Contracting Parties shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the contracting parties, the application to the trade of the contracting party taking such action, or in the case envisaged in paragraph 1(b) of this Article, to the trade of the Contracting Party requesting such action, of such substantially equivalent concessions or other obligations under this Agreement the suspension of which they do not disapprove.
- (b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, where action is taken under paragraph (2) of this Article without prior consultation and causes or threatens serious injury in the territory of a contracting party to the domestic producers of products affected by the action, that

contracting party shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such concessions or other obligations as may be necessary to prevent or remedy the injury.

"A degree of management of international markets holds out the promise of more stable trading conditions, at once reducing the need for defensive policies which isolate domestic agriculture from erratic price movements and allowing an orientation of domestic policy towards a more plausible international pattern of production and trade."

More recognition of the inherent value of international trade regulation through commodity agreements is not a sufficient argument for using such agreements to influence domestic agricultural policy. The attitude of some countries to commodity agreements and their role in domestic agricultural policy, has been essentially negative. This mirrors the attitude of some Contracting Parties to the GATT and its attempts to influence domestic agricultural policies.

There are problems using agreements to regulate international trade in primary commodities. However, there is general acceptance of what is a primary commodity. This stems from Article 36 of the Havana Charter which defines it as,¹

"... any product of farm, forest or fishery or any mineral, in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade.

¹ Jonathan T. "The CAP and International Commodity Agreements" in ed. Tunc and Hodar *Prospects for European Agriculture* (1982)

² UK Cmd Paper 7375 (1948), 56.

SECTION 2 COMMODITY POLICY.

INTRODUCTION

Josling notes,¹

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Mere recognition of the inherent value of international trade regulation through commodity agreements is not a sufficient argument for using such agreements to influence domestic agricultural policy. The attitude of some countries to commodity agreements and their role in domestic agricultural policy, has been essentially negative. This mirrors the attitude of some Contracting Parties to the GATT and its attempts to influence domestic agricultural policies.

There are problems using agreements to regulate international trade in primary commodities. However, there is general acceptance of what is a primary commodity. This stems from Article 56 of the Havana Charter which defines it as,²

" ... any product of farm, forest or fishery or any mineral, in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade.

¹ Josling T "The CAP and International Commodity Agreements." in ed. Tracy and Hodac Prospects for European Agriculture (1982)

² UK Cmd Paper 7375 (1948), 56.

The problems relate to the methods by which the parties enforce the agreement and the objectives of such agreements. According to some these objectives go beyond mere regulation of international trade in the commodity. The succeeding chapters concern not only the types of commodity agreements but also the changing role of such agreements since 1945. This section will conclude with an examination of the EEC's attitude to such agreements and an assessment of how the external environment identified in this part of the paper can influence the CAP, especially the external aspects of the policy.

Even given the accuracy of this forecasting, the method chosen to implement the agreement may also cause problems. This chapter outlines three methods by which parties to commodity agreements have chosen to regulate the market. They are:

- (a) the multilateral contract system;
- (b) the export quota system; and
- (c) the buffer stock system.

The Multilateral Contract System¹

This system is perhaps the easiest method of international commodity regulation as it involves the least interference by the Parties in the free flow of international trade. The contracts referred to are contracts of purchase and sale concluded between parties to the agreements. As such they involve the mutual exchange of rights and obligations between the parties.

¹ Khan K. *The Law and Organization of International Commodity Agreements* (1982). Chapter 5 gives an excellent account of the multilateral contract system.

CHAPTER 1: A TYPOLOGY OF COMMODITY AGREEMENTS

One element common to all Commodity Agreements, irrespective of how the parties choose to regulate the market, is the setting of prices. The establishment of the price band (minimum and maximum prices) can be determinative of the success of the agreement. Prices should not be set at levels which either encourage production or form a disincentive for the Parties to adhere to the agreement. A certain element of accurate and reliable forecasting of the trend of prices in succeeding years is essential to the success of any agreement.

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The 1967 International Grains Agreement (IGA)² provides one example of the operation of the multilateral contract system. The basic principle of the Agreement was the division of the parties into exporting and importing countries. Each of the exporting countries was given a datum quantity, assessed by the average of commercial sales over the previous five years, excluding the immediately preceding year. Datum quantities for importing countries were established in a similar manner. The basis of the Agreement was that the exporting countries were to sell up to their datum quantity and importing countries were to purchase up to their datum quantities, within the price range established by the Agreement. This was referred to as the balance of commitment on the part of the exporting countries and the balance of entitlement on the part of the importing countries.

Since all transactions between the parties had to be consistent with the price range, it is obvious that the negotiation of the price range was crucial to the success of the Agreement. A Prices Review Committee was established with responsibility for review of prices and a power to recommend changes in the level of prices should the circumstances merit such a change. This Committee provided the possibility of changing the prices to meet the market situation, and ensuring the success of the agreement. However, the IGA failed for this very reason, in 1969 when prices fell below the established minimum, no formal action was taken. This frustrated the objectives of the Agreement and lead to its demise.³

² See Ashworth F.G. International Commodity Control (1984). Chapter 7 examines the regulation of the wheat market. See also Ali L "The World Wheat Market and International Agreements" (1982) 16 JWTL 59.

³ Ali op cit n2, 67.

The Export Quota System⁴

The mainstay of this system of commodity regulation is a determination of each exporting country's level of exports, with the aim of establishing a balance between production and consumption. Before determining the level of individual exporting country quotas, it is necessary to assess the size of the world market in the commodity concerned which is available for regulation (the agreement market).

After establishing the agreement market, the parties can establish the basic export entitlement of each exporter. Such entitlements are usually based on past export performance.⁵ This method of assessing export quotas can be criticised on two grounds. Firstly, it leads to the fossilization of the current production structures and secondly, it ignores any increases in production of minor, or first time, exporting countries.

The 1977 International Sugar Agreement (ISA) met this criticism by dividing exporting countries into two classes; major and minor exporters. The significance of the distinction rests in the price mechanism which allowed for the reduction of export quotas to defend the minimum price; minor exporters were relieved of the obligation to reduce export quotas. Despite this two-fold classification of exporters, the ISA failed to achieve its objectives. This failure of the 1977 ISA to effectively regulate the market stemmed from several factors, including:⁶

⁴ Khan op cit n1, Chapter 3, International Quota System.

⁵ For an economic analysis of export quotas, see Fisher "Enforcing Export Quota Commodity Agreements: The Case of Coffee" (1971) 12 Harv.Int'l LJ 401.

⁶ Tsadik T. "International Sugar Market : Self Sufficiency or Free Trade." (1982) 16 JWTL 133 and Smith I "Structure and Policy Changes in World Sugar." (1977) 11 JWTL 228.

- (i) the residual nature of the market (sugar exports take place on a preferential basis between Cuba and members of COMECON and between countries adhering to Protocol 3 of the Lomé Convention 1975);
- (ii) there were no measures to prevent exporters exceeding their quotas; and finally
- (iii) not all sugar exporters were parties to the agreement and, therefore, were not bound by its provisions (i.e. the EEC).

The problems which plagued the 1977 ISA must be met if the sugar agreements are to be successful. For example, the limited size of the agreement market, owing to the existence of several preferential agreements, was one of the reasons for the failure of the latest sugar conference.⁷ Whilst it was argued by some that such exports were important in assessing the size of the agreement market, it was argued, particularly by Cuba, that such arrangements should not fall within the scope of the regulatory mechanisms of any new ISA.

The 1977 ISA experience also demonstrates the fact that to be successful, a commodity agreement must have all the major producers as parties since it is not possible to impose obligations on producers who are not signatories to the agreement. Equally, all substantial consumers should be involved in any agreement.⁸

⁷ Smith I "Prospects for a New ISA" (1983) 17 JWTL 308, and Smith I "UNCTAD : Failure of the UN Sugar Conference" (1985) 19 JWTL 296.

⁸ Harris S. "US and EEC policy attitudes compared towards the 1977 ISA" (1980) 31 J Agr Econ 351.

The Buffer Stock System⁹

One element of the operation of the regulatory mechanism of the 1977 ISA was the accumulation of special stocks by exporting countries which could be released to defend the maximum price. The holding of these stocks is one element of the Buffer Stock System, which may comprise of;

- (a) national stocks;
- (b) quasi-national stocks (i.e. internationally coordinated as in the 1977 ISA); or
- (c) international or buffer stocks.

The Buffer Stock System serves the same objective as the export quota system, balancing supply and demand. Rather than control production in exporting countries, the Buffer Stock System may operate through an international agency. The agency defends the prices established by means of purchases when prices are either falling towards or below the minimum price, or by releasing accumulated stock, when prices were either rising towards or above the maximum price. This direct involvement of the buffer stock system in the market place is one of the reasons given by certain developed countries, notably the United States, for their reluctance to enter into commodity agreements.¹⁰ The Buffer Stock may either run out of money to make its purchases or accumulate excessive stock if it incorrectly predicts the trend of prices in the commodity concerned. The inherent unpredictability of the market requires that a sufficiently accurate and reliable forecast of the trend in prices is made before the Buffer Stock System can be effectively used as a method to regulate international commodity trade.

⁹ Khan op cit n1, ch 4 The International Stock System: see also Brown CP Primary Commodity Control (1975) ch 4 and McNicol DL Commodity Agreement and Price Stabilization (1978) ch 3.

¹⁰ See Denoon D. The NIEO. A US Response (1979)

CHAPTER 2 THE HAVANA PERIOD

The analysis of the three methods used for the international regulation of commodities suggest the following conclusions;

- (i) there is a need for reliable and accurate forecasting of the trend in prices for any commodity which will be subject to international regulation;
- (ii) there is a need for adequate provision to be made in any agreement for an alteration to the established price structure;
- (iii) any agreement should aim to include not only all producers of the commodity but also all substantial consumers;
- (iv) the agreement market must reflect all trade in the commodity concerned; and finally
- (v) the agreement should provide the means to change its basic economic provisions given the economic performance of its parties.

The organization of any commodity must reflect the operation of the market for that commodity. Just as the operation of the market continuously changes so should the organization reflect that change.

Before outlining a proposal which encompasses the conclusions made above it is necessary to outline the two periods of commodity policy since World War II. Two periods which reflect differing objectives for commodity agreements and differing means of achieving these objectives.

CHAPTER 2: THE HAVANA PERIOD.

Chapter VI of the Havana Charter

Article 55 of the Charter for the proposed International Trade Organization stated,¹

"The members recognize that the conditions under which some primary commodities are produced, exchanged and consumed are such that international trade in these commodities may be affected by special difficulties such as the tendency toward persistent disequilibrium between production and consumption, the accumulation of burdensome stocks and pronounced fluctuations in prices. These special difficulties may have serious adverse effects on the interests of producers and consumers.... The members recognize that such difficulties may, at times, necessitate special treatment of the international trade in such commodities through inter-governmental agreement."

Whilst Article 55 recognised the role of commodity agreement in ensuring general economic expansion, the concept of special difficulties severely restricted the scope for commodity agreements. This concept of special difficulties is further developed in Article 62 of the Charter. Amongst the factors listed in this article are the following:²

- (a) a burdensome surplus has developed or is expected to develop;
- (b) in the absence of governmental action, the surplus would cause serious hardship to producers;

¹ UK Cmd Paper 7375 (1948), 56.

² Ibid, 60.

- (c) a substantial amount of production must come from minor producers;
- (d) the surplus would not be corrected by ordinary operation of market forces (i.e. a reduction in price does not lead to an increase in consumption or decrease in production);
- (e) widespread unemployment or under-employment in connection with the commodity has arisen or is expected to arise;
- (f) this problem will not be cured within a reasonable time by the ordinary operation of market forces.

Despite the fact that the Havana Charter did not enter into force, the provisions of Chapter VI are, to some extent, still relevant. As ECOSOC Resolution 30(IV) recommended,³

"pending the establishment of the International Trade Organization, members of the United Nations adopt as a general guide in intergovernmental consultations or actions with respect to commodity problems the principles laid down in [Chapter VI]"

These principles were laid down in Articles 60 and 63 of the Havana Charter. These articles provide for:⁴

- (a) agreement negotiations shall be open to all parties to the ITO (now the United Nations);
- (b) commodity conferences shall be preceded by the appointment of a study group for the commodity;
- (c) agreements concluded shall provide for the adequate representation of both producer and consumer

³ UN DOC No E/403. The resolution also requests the Secretary-General to set up an Interim Co-ordinating Committee for International Commodity Arrangements.

⁴ Walker H. "The International Law of Commodity Agreements" (1963) 28 Law and Contemporary Problems 392, 402.

countries, giving each group equal votes in the administration of the agreement;

- (d) agreements shall be designed to assure availability of supplies sufficient to meet world demand;
- (e) agreements shall provide for opportunities for satisfying national consumption;
- (f) participating countries shall formulate and adopt programmes of internal adjustment to ensure that within the duration of the agreement, progress should be made to resolve the problems of the commodity; and
- (g) equitable treatment for non-participants.

The impetus provided by these principles to commodity agreements was severely restricted. The concept of special difficulties ensured that the objectives of commodity agreements would be limited to the elimination of surplus and the avoidance of unemployment or underemployment in the commodity sector concerned. Prices were to be stable and remunerative for producers and fair and equitable to consumers.⁵ The capacity of such agreements to foster the economic development of developing countries was severely limited. As Khan notes,⁶

"Primarily concerned with avoiding the severity of commodity controls of the past, the Havana principles show a remarkable disinterest in the positive aspects of ICA's."

Before assessing how these principles have changed, it is important to analyse the efforts made within the framework of

⁵ Article 57(c) of the Havana Charter op cit n1, 57.

⁶ Khan K. The Law and Organization of International Commodity Agreements (1982), 73.

the GATT to formulate a commodity policy on the basis of these principles.

The GATT and Commodity Policy

Article XX of the GATT provides,⁷

"Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Contracting Party of measures:

(h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved."

The interpretative note to this provision indicates that the exception, provided for, relates to any commodity agreement which conforms to the principles approved by ECOSOC Resolution 30(IV). The Havana principles have as a result of this provision been transferred into the legal framework of the GATT. The only additional stipulation is that the agreement is not disapproved of by the GATT Contracting Parties.

A GATT Working Party established to assess the impact of Commodity Problems on International Trade noted some of the reasons why a general economic upturn did not automatically lead

⁷ BISD Vol IV (1969), 37-38.

to a recovery of commodity prices.⁸ One of these reasons was the restrictive measures which hampered trade in the commodity. Amongst these reasons were government support for agricultural prices and incomes, quantitative restrictions on imports, and revenue and protective duties. The Working Party concluded,⁹

"There are, therefore, many facets in the overall picture. While fluctuations in economic activity in the industrial countries clearly affect demand and the general price movement of primary products taken as a whole, international and national policies, both in importing and exporting countries, have an important effect and may in the case of some commodities, be the decisive factor in trade in the commodities concerned."

Whereas the Havana Charter prescribed a programme to assist the implementation of the commodity agreement and ameliorate the conditions which gave rise to the need for such an agreement, the conclusions of the GATT Working Party recommended a different approach. The above quotation suggests that one of the major obstacles to the success of any international commodity agreement is the existence of domestic agricultural policies which are unduly protectionist. Indeed a later report emphasized the need for the industrial countries to restrain the uneconomic production of primary commodities and eliminate restrictions and preferences. These aspects of domestic agricultural policy, the report concluded merely destabilized international trade in the commodity. The report continues,¹⁰

⁸ BISD 8th Supp 76.

⁹ Ibid, 81.

¹⁰ BISD 10th Supp 83, 93.

"However, while ICA's might contribute to the stabilization of prices, they do not provide the complete answer to the needs of the developing countries for more stability in their earnings from commodity exports."

To remedy this problem, the Working Party suggested that an answer had to be found to the protectionist agricultural policies of developed countries. The Working Party reasoned that the best method to achieve progress would be for developed countries to follow liberal import policies.¹¹ Such policies would allow for increasing opportunities for export, and export earnings, growth on the part of developing countries.

The Baumgartner-Pisani Plan

Proposals have been made within the framework of the GATT on commodity regulation and indeed some commodity agreements have been concluded. One of the most important proposals made was referred to as the Baumgartner-Pisani Plan.¹² The main line of argument used in this proposal was that world market prices were too low, being lower than the production costs of major producers. Given the importance of the major producers, the Plan argued that they should be entitled to a fair and equitable price for their production. This would be achieved by raising the price of the product for all developed importing countries. Surpluses of the commodity would, if feasible, be used in a food aid

¹¹ Ibid, 93-94.

¹² For a discussion of this proposal see Casadio Transatlantic Trade (1973) ch 6; Knox The Common Market and World Agriculture : Trade Pattern in Temperate-Zone Foodstuffs (1972) ch 5; Warley T. "Western Trade in Agricultural Products" in ed. Shonfield International Economic Relations of the Western World 1959-71 Vol.1. Politics and Trade (1976) 287, 360 et seq.

programme. This would accelerate the economic development of developing countries. The plan, as well as an organization for temperate-zone production, also envisaged market organizations for tropical and non-mineral products. The latter would be an extension of the French "suprix" system, which guaranteed a certain level of market access and a higher price for tropical products from French colonies. The plan concluded,¹³

"Since it is, in many countries, the existence of a large number of socially marginal farmers that decides the level of the support price, no such support price could ever be the economic basis of an agreement regulating world trade."

Despite the obvious advantages of the Plan, it suffered from several serious drawbacks. Firstly, there was no indication of how supply in the temperate-zone products would be regulated. Secondly, there would have been problems associated with the setting of the price level. Obviously the Plan envisaged the setting of a high international price. Even ignoring the unacceptability of this to consumer countries, this price would have undoubtedly encouraged production, even on the most marginal of farms. Finally, the plan ignored the powerful social, economic and political interests which form the basis of domestic agricultural policies, especially of those countries who are net importers. These interests have played their part in defeating proposals for liberalization, it is therefore essential that any regulation of the international commodity market should take them into account.

¹³ Proceedings of UNCTAD 1 (1964) Vol.III 458, 464.

Arrangements and Agreements

It would be incorrect to assume that no commodity agreements have been concluded under the auspices of the GATT. Several arrangements and agreements have been made, for example in relation to dairy products¹⁴ and bovine meat.¹⁵ It is interesting to contrast the agreements with the typical type of commodity agreement outlined in Chapter 1. Take for example the 1979 International Dairy Agreement (IDA).

The preamble to the IDA recognizes the need, given the interests of both producers and consumers to avoid surplus and shortage situations and to maintain prices at equitable levels.¹⁶ Article 1 serves to reinforce these objectives, adding to them the goal of ever-greater liberalization of world trade in dairy products.¹⁷ The basic obligation of the Contracting Parties to the IDA is to provide the International Dairy Council with information on a range of topics, for example domestic policy and trade measures.¹⁸ Given this information in times of market disequilibrium or when such disequilibrium threatens to occur, the task of the Council is to identify possible solutions. Provision is made in Article V of the agreement for the provision of food aid to developing countries in the form of dairy products.¹⁹ The most interesting feature of the

¹⁴ BISD 26th Supp., 91.

¹⁵ Ibid, 84.

¹⁶ Ibid, 91.

¹⁷ Ibid, 92.

¹⁸ Ibid, 93. Article III of the IDA.

¹⁹ Ibid, 95. *Report of UNCTAD I (1964) Vol.II 5-6.*

agreement is the existence of several product protocols which establish minimum prices for such products as skimmed milk powder, milk fat and certain cheeses.²⁰

Article 3(2)(b) of Protocol 1 allows for the adjustment of the established minimum price. The obligation of the exporting participants is to ensure the normal commercial requirements of importers are satisfied, for the latter they agree to implement the price objectives. The IDA and more especially the 1979 Arrangement concerning Bovine Meat, are not commodity agreements in the sense envisaged in chapter 1 of this Part. They are essentially commodity cooperation agreements designed to enable the maximum amount of information to be collected on various matters which affect the market in that commodity. However, both the IDA and the Bovine Meat Arrangement are consistent with the general philosophy of the GATT. This point emphasizes the basic failing of the GATT attempts to regulate international commodity trade since commodity agreements are inconsistent with demands for the removal of trade barriers.

ICAs also interfere with the proper application of Article I GATT, the mfn clause, since it is impossible within the framework of commodity agreements to achieve full reciprocity.²¹ Despite the existence of Part IV of the General Agreement, and Article XXXVI:4 in particular, the GATT remains inappropriate for the international regulation of the commodity trade. As Preibsch remarked,²²

²⁰ Ibid, 101-115.

²¹ The essential element of the mfn clause is the provision of equality between the Contracting Parties, this element cannot operate in the context of ICA's since they provide for certain inequalities of treatment.

²² Proceedings of UNCTAD 1 (1964) Vol.II 5-6.

"The imposing code of rules and principles drawn up at Havana and partially embodied in the GATT... seems to be inspired by a conception of policy which implies that the expansion of trade to the mutual advantage of all merely requires the removal of the obstacles which impede the free play of these forces in the world economy. These rules and principles are also based on an abstract notion of economic homogeneity which conceals the great structural differences between industrial centres and peripheral countries with all their important implications. Hence, GATT has not served the developing countries as it has served the developed countries. In short, GATT has not helped to create the new order which must meet the needs of development, nor has it been able to fulfil the impossible task of restoring the old order."

The task of creating the new order was to fall to the United Nations Conference on Trade and Development (UNCTAD).

"A basic objective of ICA's is in general to stimulate a dynamic and steady growth and to ensure reasonable predictability in the real export earnings of developing countries, so as to provide them with expanding resources for their economic and social development while taking into account the interests of consumers in importing countries."

The conference went on to elaborate on the methods by which these objectives would be achieved. To some extent these

1 Proceedings of UNCTAD I (1964) Vol. II, I.

2 Proceedings of UNCTAD I (1964) Vol. I, Annex A II I — ICA's and the removal of obstacles to, and expansion of, trade.

CHAPTER 3: THE UNCTAD PERIOD.

Geneva to Nairobi

The Geneva Conference of 1964 (UNCTAD I) ushered in a new phase in commodity policy. The objectives of commodity agreements, which were so restrictive during the Havana period, were broadened to encompass the desire of developing countries for a new, more equitable, world economic order. Henceforth, commodity agreements would serve the goals of development.

The foremost advocate of change at the Geneva Conference was the Latin American economist Preibsch, who advocated "New Trade Policy for Development", particularly with respect to commodities.¹ Preibsch's basic argument was that since the end of World War II, the terms of trade for developing countries had steadily declined, thus thwarting their efforts towards economic development. Commodity agreements, Preibsch argued, should be used to enhance the terms of trade. This would encourage development by increasing the stability of commodity markets. The conference endorsed the thinking of Preibsch, stating,²

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¹ Proceedings of UNCTAD I (1964) Vol.II, 1.

² Proceedings of UNCTAD I (1964) Vol.1. Annex A II 1 — ICA's and the removal of obstacles to, and expansion of, trade.

methods were similar to those advocated in Chapter VI of the Havana Charter.³ However, some aspects of these methods did reflect the change of emphasis in commodity policy by calling for direct international intervention in domestic agricultural programmes.⁴ In addition, the techniques to be employed advocated not only minimum import quantities for developing country exports to developed countries but also the latter's assistance in the diversification of developing country trade. As such, these measures were taking to a logical end the new objectives set for ICA's.

Progress toward implementation of this "New Trade Policy for Development" was slow. This reflected developed country concern about the scope of the programme and the arguments on which it was based. A more obvious reason for the lack of progress in commodity policy was the theory of development which was popular in the 1960s. This theory advocated the economic development through industrialization, thereby relegating the valuable contribution which agricultural development could make to this goal⁵. The second UNCTAD conference in 1968 in New Delhi reflected this by focussing discussion on the implementation of preferential tariff schemes for developing country exports. The concern of developing countries over the implementation of the

³ Idem. The techniques to be employed would vary according to the characteristics of the commodity concerned. Appropriate measures included quota arrangements, long term contract and stock arrangements.

⁴ Idem. Special Principle 8 stated that the domestic agricultural programmes of developed countries should be formulated and applied in such a way as not to deprive developing countries of the opportunity of supplying a reasonable proportion of domestic consumption in these countries. One of the techniques to be used in ICA's was a system of levies in developed importing countries which would provide reimbursement of the proceeds to developing exporting countries. (Proceedings of UNCTAD I (1964) Vol.I. Annex II Actions recommended to be taken by developed market economy nations.)

⁵ At the 1967 meeting of the Group of 77, Preibsch asserted that agricultural development should go hand in hand with industrial development, cited in Sauvant K. The Group of 77 Vol.I 193, 195.

Generalized System of Preferences again pervaded discussions at the 1972 UNCTAD Conference in Santiago.

However, the events of the following year were to refocus the concerns of developing countries on commodity policy. The quadrupling of oil prices by the Arab nations in the course of 1973 served to underline the power of developing country commodity power. Despite suggestions of "food power" by some developed countries,⁶ the latter had no answer to the "petro-power" exhibited by the Arab nations. Spurred on by their example, developing countries called for the establishment of a new world economic order and given the fear of repetition of the oil episode, developed countries acquiesced to these demands. General Assembly Resolution 3201 (S-VI) declared the principles on which this New International Economic Order (NIEO) would be based. Article 4(j) states that there shall be a,⁷

"just and equitable relationship between the prices of raw materials, primary commodities, manufactured and semi-manufactured goods exported by them and the prices [of goods] imported by them, with the [developing countries] aim of bringing about sustained improvement in their unsatisfactory terms of trade and expansion of the world economy.

This demand for indexation of commodity prices was subsequently elaborated. It was coupled with demands for greater use of producer associations and demands for the conclusion of long-term multilateral contract agreements.⁸ It is

⁶ The suggestion was made by the United States.

⁷ For the document establishing the NIEO see Sauvart op cit n5 Vol.V 559-572.

⁸ GA Res 3202 (S-VI) Programme of Action on the establishment of a NIEO. GA Res 3281 (XXIX) Charter of Economic Rights and Duties of State. See also Krenin and Finger "A Critical Survey of the NIEO" (1977) 10 JWTL 493 and Francis "Producer's Associations in Relation to the NIEO". (1981) 30 ICLQ 745.

against this background that the fourth UNCTAD conference convened in Nairobi.

The Integrated Programme

Section 1, paragraph 3(A)(iv) of General Assembly Resolution 3202(S-VI), anticipated the preparation of an Integrated Programme for Commodities (IPC).⁹ The aim of the IPC would be to bring about a lasting improvement in the functioning of world commodity markets and to strengthen the commodity sectors of developing countries' economies by redistributing more equitably the benefits derived from international commodity trade.

Resolution 93(IV) on the IPC laid down the objectives, coverage, international measures, and timetable for the new era in commodity policy. The two basic objectives of the IPC were to:¹⁰

- (a) improve the terms of trade of developing countries thereby to improving their purchasing power; and
- (b) to encourage a more orderly development of world commodity markets.

The subsidiary objectives of the IPC correlate with those espoused in the Havana Charter and at the previous UNCTAD conferences with several additions. (For example, the objectives of increasing developing country participation in the marketing, distribution and processing of commodities.)

The list of products in Resolution 93(IV) can be subdivided into three categories, agricultural raw materials, minerals (for example copper and tin) and finally food commodities (bananas, cocoa, coffee, meat, sugar, tea and vegetable oils).¹¹ The coverage of the

⁹ GA Res 3202 (S-VI) op cit n5 Vol.5, 561.

¹⁰ UNCTAD DOC TD/184, 3. Paragraph II.

¹¹ Idem, paragraph 14.

programme was similar to that discussed at the pre-conference meeting of the Group of 77, with the exception of grains. The core commodities of which there were ten,¹² were calculated to be those of most interest to developing countries. It is worthwhile to note at this stage that not all of these products are solely produced by developing countries and in some cases developed countries are in fact the major producers. The international measures envisaged by the IPC included, inter alia:¹³

- (a) international commodity stocking arrangements;
- (b) the establishment of pricing arrangements;
- (c) internationally agreed supply management measures;
- (d) the improvement and enlargement of compensatory financing facilities; and
- (e) the improvement of market access to developed countries.

The major element was to be the international stocking arrangements. Under these arrangements it was envisaged that for each of the core commodities covered by the programme, a buffer stock system would be established. This system would be supplemented by either export quotas or production controls or multilateral purchase and supply contracts or a combination of these. The central element of the IPC was the Common Fund, the source of finance for the buffer stock system.¹⁴ The rationale for the Common Fund was based on the UNCTAD reasoning that one of the reasons for the failure to establish a series of international commodity agreements was a shortage of the finance necessary to ensure the success of any buffer stock operation. To remedy this, Resolution 93(IV) urged the Secretary General of UNCTAD to convene a conference to decide, inter alia, the objectives, financing needs and mode of operation of the Common Fund.

¹² The core commodities are cocoa, coffee, copper, cotton, jute, rubber, sisal, sugar, tea and tin.

¹³ Op cit n 10, paragraph 12.

¹⁴ Ibid paragraphs 21-32.

Before the first Common Fund Conference had even convened, the attitudes of some countries to the Fund had changed. The issue of indexation of commodity prices, alluded to in General Assembly Resolution 3201 (S-VI) and which had lain dormant since 1974, re-emerged. Some developed countries viewed this issue of indexation as an interference with the free play of international economic forces.¹⁵ Speaking as President of the European Council of Ministers, the West German delegate to UNCTAD(IV) remarked,¹⁶

"the EEC and its member States wish to increase their aid to developing countries but they cannot envisage the automatic transfer of revenues from their import policy or their tax system."

The flow-on effect of this questioning of the economic wisdom of indexation was a re-appraisal of the overall merit of the IPC. Evidence produced from various studies cast doubt on the terms of trade argument which formed the basis of UNCTAD commodity policy. These studies doubted whether the terms of trade had shown a steady decline since World War II.¹⁷

¹⁵ For a discussion of the problems of indexation see Cuddy "Indexation in International Commodity Agreements" (1979) 12 JWTL 501 and UNCTAD "An Integrated Programme for Commodities and Indexation of Prices" in ed. Sauvart and Hasenpflug The New International Economic Order (1978).

¹⁶ Reservation to GA Res 3281(XXIX) Charter of Economic Rights and Duties States. In addition to the reservation expressed by West Germany on behalf of the EEC, reservations were also expressed by France, Italy, Spain, Belgium and the Netherlands. The response of the UK was one of divide and delay. See Goodwin G. "The OECD Industrialised Countries Response" in ed. Goodwin G. and Mayall J. A New International Commodity Regime (1980).

¹⁷ See Ashworth F.G. International Commodity Control and Yeats A.J. Trade and Development Policies (1981).

Of greater concern were the studies questioning the reliance placed by the UNCTAD Secretariat on the viability of the buffer stock system to achieve the objectives of the IPC.¹⁸ Against this background it was not surprising that the first conference on the Common Fund ended in failure. The developed countries (Group B) could not even agree that a common fund was desirable, whilst the developing countries were redefining their concept of the fund. Further studies were ordered. By the time the second conference convened, Group B had at least decided that a common fund was necessary, yet attitudes differed over the size of the Fund and its mode of operation. On the hand, the developing countries originally foresaw a Fund of some \$6 billion which would positively encourage ICA's. On the other hand, Group B argued that the Fund should have no capital structure of its own, and should play a passive and residual role in commodity markets. Subsequent negotiations at the second conference proved fruitless and the conference closed without agreement on the fundamental principles of the Common Fund.¹⁹

Urged on by the forthcoming UNCTAD V Conference, agreement was finally reached on the 'Fundamental Elements' of the Common Fund in March 1979. It was agreed that,²⁰

18 E.g. Behrmann J. Development, the International Economic Order and Commodity Agreements (1978). The results of an analysis of the IPC by Behrmann yields results which show that implementation of the IPC may lead to developing country gains. The revenue gains from the programme would vary considerably across commodities. The conclusion reached is that various events outside the scope of the IPC will determine its success.

19 An excellent discussion of the Common Fund Negotiations is found in Brown CP The Political and Social Economy of Commodity Control (1980) ch 4 The Common Fund Dialogue.

20 UNCTAD/CA/1329., 1. A copy of this document can be found in Goodwin and Mayall A New International Commodity Regime (1980), 71-75. For a comment on the fundamental elements see Parkinson "The UN IPC" (1981) 34 CLP 259; Wassermann U. "UNCTAD: The Common Fund" (1979) 13 JWTL 355.

"The common fund would be established as a new entity and an effective and financially viable institution to serve as a key instrument in attaining the agreed objectives of the [IPC] as embodied in UNCTAD Resolution 93(IV)."

The overall agreement was a success for Group B countries who had doubted the wisdom of establishing a Common Fund. Although Group B gave into the demand for a Common Fund, the mode of operation and financial resources suggest that it will not be the catalyst for ICA's which developing countries had hoped would result from acceptance of the IPC. Instead, the Fund will be a lending institution dealing directly with international commodity bodies who choose to associate with it.

The resources which it is allocated to carry out these "First Window" activities come from direct government contributions and resources deriving from the association of ICA's with the fund. The fact that total resources are scanty and the choice given to ICA's whether or not to associate with the fund, indicate that the fund will favour commodities for which agreements have already been concluded. The role of the Fund in encouraging ICA's for products not previously subject to regulation will be limited.²¹ One positive aspect of the common fund discussions was the establishment of a "Second Window". This window will finance measures other than buffer stocks measures, which will be financed under the "First Window". For example, the Second Window will finance measures which will enhance the long-term competitiveness of a particular commodity. Second window

²¹ Khan K. "The Fundamental Elements of the Common Fund" 5 Food Policy 38 Tait and Seifer "The Common Fund for Commodities" (1981-82) 16 G Wash J Int'l L & Econ 483; Cuddy "The Common Fund and Earnings Stabilization" (1978) 12 JWTL 107; Avramovic "Common Fund: why and of what kind?" (1978) 12 JWTL 375.

activities will, therefore, reinforce some of the subsidiary goals of the IPC.²²

As Brown notes when talking of the IPC,²³

"Pressure on the Secretariat for action, whether real or anticipated, produced a programme which, although it provided momentary relief through structured activity was neither the product of a careful analysis of the problem nor adequately weighed up the possible consequences."

Due to the restrictive scope of the Common Fund and the slow rate of progress in achieving the major element of the IPC (ICA's using the buffer stock system) UNCTAD has shifted the emphasis to other elements of the IPC. UNCTAD V in 1979 signified this shift by discussing methods by which commodity producers would increase their share of benefits from the commodity trade.²⁴ One method to achieve this objective would be an improvement in the Compensatory Financing Facility (CFF) established by the IMF.²⁵

Beyond Nairobi

As already stated, compensatory financing for fluctuations in commodity export earnings was central to the discussions in Manila at UNCTAD V. The concern with price stabilization and enhancement, evident at UNCTAD IV, was replaced by concerns

²² E.g. encouraging the processing, marketing and distribution of commodities produced by the developing country.

²³ Op cit n 19, 100.

²⁴ E.g. UNCTAD DOC TD/229 Action on export earnings stabilization and developmental aspects of commodity policy; TD/229/Supp 2 Processing before export of primary commodities; TD/229/Supp 3 Marketing and Distribution of primary commodities.

²⁵ Goureaux L. The IMF's Compensatory Financing Facility (1980).

over market and earnings stabilization. Complaints about the adequacy of the IMF CFF and the STABEX scheme, operated by the EEC, led the UNCTAD Secretariat to advocate the establishment of a new facility.

Since the 1976 Nairobi Conference, and more especially since the This new facility would operate alongside the two existing ones. UNCTAD imagined that a third window to the Common Fund would be created. The view that the proposal constituted a form of indirect indexation or international deficiency payments scheme, militated against its whole-hearted acceptance by developed countries.²⁶ The growth of protectionist tendencies in the developed countries and the problems of debt repayment overshadowed discussions of commodity policy at UNCTAD V. The discussions at the sixth UNCTAD conference in 1982 in Belgrade once more concentrated on these more pressing problems to the detriment of commodity policy.

However, this conference had before an UNCTAD Secretariat proposal for an immediate action programme on commodities.²⁷ One element of this was the proposal for interim commodity agreements which, unlike ICA's, would concentrate on the short term balance of world supply and demand for the main commodity exports of developing countries. These agreements would bridge the period needed for a strong political commitment to full commodity agreements. Such agreements would impede the realisation of full ICA's as the temporary nature of interim agreements would be extended until the political climate improved.²⁸ Considering the objections of some developed countries to ICA's, it is extremely doubtful whether interim agreements could be negotiated. Other recommendations such as

²⁶ TD 229, 94.

²⁷ UNCTAD DOC TD/273.

²⁸ Ibid 22-34.

the expansion and liberalization of the IMF Compensatory Financing Facility, merely echoed the work of previous conferences.

Since the 1976 Nairobi Conference, and more especially since the Common Fund discussions, there has been a marked downturn in the activity of the UNCTAD. Perhaps, the role of the Secretariat had changed too much. Initially, a means of achieving the development oriented goals of developing countries through its activities as an information gatherer and a forum for negotiations, it was transformed into an initiative-taking organization.²⁹ This transformation was most obvious during the Common Fund discussions. Although the changing role of the Secretariat alienated an important section of the membership, it would be a mistake to ascribe the lack of implementation of the IPC to the mistakes of the Secretariat. Perhaps the reason for the delays stems from the concerns of developed countries. It appears that the developed countries are still clinging to the remnants of the old economic order as epitomised by the rules of the GATT. These countries seem unwilling to countenance the international interference in the implementation of domestic agricultural policies which would result from acceptance of the major element of the IPC. These objections to the IPC cannot be based on the fact that the history of ICA's is one of failure, since the IPC is fundamentally different from anything proposed during the Havana period of commodity regulation.³⁰

² International Tropical Timber Agreement: Annual Review of UN Affairs (1983), 223.

³ International Natural Rubber Agreement. For details of the agreement see O'Grady 'INRA: Progress and Problems' (1981-82) 16 O Wash J Int'l L & Econ 625.

⁴ International Coffee Agreement. For details of the operation of

²⁹ This transformation has been noted by Brown op cit n 19.

³⁰ Commonwealth Secretariat: The North-South Dialogue: Making it Work (1982), 37.

CHAPTER 4: COMMUNITY POLICY AND THE WAY AHEAD.

Community Policy

Speaking on behalf of the European Community at UNCTAD VI, Dr Lambsdorff, the German Economic Minister, announced,¹

"We are ... prepared to reaffirm the importance we attach to the Integrated Programme for Commodities. The Community is also prepared to seek means of improving the operation of existing commodity agreements and to participate constructively in any discussion of other products, in particular those that are part of the Integrated Programme."

Despite these good intentions the EEC has difficulty in translating this general commitment to commodity agreements into the assumption of specific obligations.

In an examination of EEC policy towards ICA's two trends emerge. First, for products which are not produced in the EEC either at all or produced in negligible quantities, the EEC has no hesitation entering into commodity agreements. Notable examples are tropical timber,² rubber³ and coffee⁴. The second trend is that for products which are produced in the EEC, in significant amounts

¹ Proceedings of UNCTAD VI: Volume II, 56.

² International Tropical Timber Agreement: Annual Review of UN Affairs (1983), 223.

³ International Natural Rubber Agreement. For details of the agreement see O'Grady "INRA: Progress and Problems." (1981-82) 16 G Wash J Int'l L & Econ 605.

⁴ International Coffee Agreement. For details of the operation of previous ICA's see Khan K "International Coffee Agreement." 3 Food Policy 180.

enters into commodity agreements, provided, they contain no substantive economic provisions. As an example of this latter trend, the Community has acceded to the Arrangement on Bovine Meat,⁵ the International Dairy Agreement⁶ and the International Olive Oil Agreement.⁷

The Bovine Meat Arrangement is limited to the provision of market information, as is the International Olive Oil Agreement. The International Dairy Agreement does contain some economic provisions, in the form of minimum prices. Considering the fact that the EEC is one of the major producers of dairy products, and especially of the products listed in the Protocols to the Agreement, such economic provisions impose no burden on Community producers. In fact, participation in the IDA has led to a noticeable decline in the amount of export refunds granted. Should the proposed ICA include economic provisions interfering with domestic production, the EEC is much more reticent. Take for example, the 1977 International Sugar Agreement (ISA).⁸

Negotiated under the auspices of UNCTAD, pursuant to Resolution 93(IV), the 1977 ISA found it impossible to achieve its primary objective, the stability of world sugar price. An important element in this failure, though not the only one, was the non-participation of the Community, one of the four major producers. At a time when other producers were cutting production in conformity with ISA requirements, the EEC increased production

⁵ BISD 26th Supp, 84.

⁶ Ibid, 91.

⁷ See Wassermann U "UNCTAD: International Olive Oil Agreement." (1979) 13 JWTL 447.

⁸ Harris S. "US and EEC policy attitudes compared towards the 1977 ISA." (1980) 31 J Agr Econ 351.

and through the use of export subsidies, acquired a larger share of the world market in sugar. The 1981 sugar COM provides for Community accession to the ISA, but, as previously noted, discussions on a successor to the 1977 ISA ended in failure.⁹

From this discussion, it is possible to indicate a number of factors which influence the EEC policy towards commodity agreements. Foremost amongst these is the operation of the CAP. The policy is primarily motivated by concerns with the welfare of domestic farmers. Any commodity agreement which interferes, in a negative fashion, with the delicate balance achieved by the CAP, stands little chance of acceptance within the EEC. Indeed, it could be asserted that the CAP, as presently formulated, could not be adapted so as to ensure consistency with the demands imposed by commodity agreements. One essential element of any internal reform is that it be evolutionary rather than revolutionary. This element would have to be transferred to international agreements, to ensure internal acceptance of these agreements.

A voice as equally powerful as domestic producers is that of the domestic processing industry. This industry would undoubtedly be affected should some of the subsidiary objectives of the IPC be implemented. The development of a processing industry in the developing country producer would seriously jeopardize the economic viability of the EEC's processing industries. Moreover, should these countries also become involved in the marketing and distribution of the processed product further damage would be caused to this industry. The Community has sought to assure the maintenance of raw material supplies to its domestic processing

¹⁰ For a fuller discussion of the Lomé Convention, see Part IV of this paper.

⁹ Terlinden European Sugar Policy (1985). See also references given in footnotes 6-8, Chapter 1 of this Part.

industry by concluding the Lomé Convention with certain developing countries.¹⁰

Coupled with doubts about the domestic effects of commodity agreements are widespread doubts about aspects of UNCTAD's commodity policy. For example, the terms of trade argument used by Preibsch as the rationale for commodity agreements. Various studies show that it is by no means certain that developing countries terms of trade have in fact constantly declined. Preibsch's argument has been supported by other studies. The facts suggest any conclusion that you may wish to reach, since they are dependent on the base year chosen or the number of commodities covered or the importance of these commodities to developing country trade. Even accepting that the terms of trade of developing countries have declined, some developed countries express concern about the interference with the free play of market forces which ICA's entail. Foremost of these countries are the Federal Republic of Germany, the United States and, to a lesser extent, the United Kingdom. In relation to the question of direct indexation of commodity prices to the prices of manufactured goods, the FRG argued that since these fixed price relationships would suspend the operation of market mechanism. This would interfere with the functioning of the world economy overall and this would lead to inflation.¹¹

Concern was also expressed by these countries about the role envisaged by UNCTAD policy for prices. The policy intimated that the price would be remunerative and would rise. As such, the FRG considered that this would effect a divorce between the enhanced

¹⁰ For a fuller discussion of the Lomé Convention, see Part IV of this paper.

¹¹ Goodwin G "The OECD: Industrialised Countries Response" in ed Goodwin and Mayall A New International Commodity Regime (1980) III, 122.

price of the ICA and the long-term representative equilibrium price for that commodity. Instead of ICA's, these countries argued for structural adjustment, leading to an increase in the level of developing country processing of the commodity. Such increases could be affected by investment guarantees given by the developing country to developed country investors.¹² However, given the political commitment which exists among developing countries to the idea of commodity agreements, it is suggested that the way forward is not as advocated by the FRG, the US and the UK, but through a revitalised form of commodity negotiations.

A new form of commodity negotiations

The aim of the proposal made below is to effect a compromise between the positions espoused by developed and developing countries. As such the proposal has to meet the doubts expressed by developed countries and offer the developing countries a framework within which they can achieve economic development.

The proposal anticipates three types of commodity agreements:

- (a) Commodity Co-operation Agreements (CCA);
- (b) Multilateral Contract Commodity Agreements (MCCA);
- and,
- (c) International Commodity Control Agreements (ICCA).

Before any of these agreements are concluded a number of preconditions must be met. Borrowing from the Havana period of commodity policy, a request must be made by two or more importing or exporting countries of a commodity for an examination of the prospects of entering into negotiations. A report is then prepared on the commodity and the report decides whether or not the commodity would benefit from regulation. If

¹² Proceedings of UNCTAD V (1979) Vol 1, 64.

it would not, the request is denied. If it would benefit a negotiating conference is called. At this conference, the Parties interested in the trade of the commodity would have the choice of the three agreements.

These agreements may be differentiated by their objectives and the methods chosen to implement these objectives. The range is between minimum price only to a price band associated with a buffer stock and export quota system. It is envisaged that the parties will first conclude the first type of agreement, the CCA.

Apart from the setting of a minimum trading price for the commodity concerned, no other economic provisions are included in the CCA. The aim of the CCA will be to prepare the way for the next stage of regulation and to demonstrate to developed countries some of the advantages which could flow from commodity arrangements. As a next step in the regulation of the commodity, it is envisaged that Multilateral Contract Commodity Agreement (MCCA) will be concluded. This may be the starting point for some commodities should the CCA prove ineffective given the demands of the commodity or if the commodity has previously been subject to international regulation. Under the MCCA some degree of market intervention is envisaged, in the form of minimum and maximum price within which the contracts will be fulfilled. Each Party will agree to import or export a basic quantity from or to any source thereby reducing the rigidity of traditional multilateral contract agreements. Since these MCCA's have a greater range of objectives, provision is made for the charging of a levy which will assist developing countries in the fulfilment of their contracts.

The final stage of regulation will be the International Commodity Control Agreement (ICCA), which will be suitable for a limited number of commodities, (i.e., those which can be effectively and

economically stored). The stocking policy introduced under the MCCA system will form the basis of the buffer stock system. Prices will be protected by the operation of this stock and the implementation of an export quota system for major producers. The enhanced objectives of the ICCA call not only for the charging of a levy to aid developing country diversification but also association with the Common Fund. As a final step to ensure the success of the ICCA, policy recommendations may be made to effect changes in the domestic agricultural programmes of all parties. Each type of agreement makes provision for food aid and MCCA's and ICCA's couple this with the development of a national food development programme.

Each of the various agreements provides for the establishment of an International Council to ensure the adaptability of the agreement to market conditions. The timetable imposed ensures that the evolution from CCA to ICCA is long enough to bring about a structural readjustment of the Parties' domestic agricultural programmes. This is one of the positive aspects of the plan, but for developing countries this period may be considered excessively long.

A NEW FORM OF COMMODITY NEGOTIATION.

The following process shall govern the negotiation and conclusion of commodity agreements.

Step 1.

A request may be made by either

- (a) two or more exporting countries of a commodity; or
- (b) two or more importing countries of a commodity

for a report to be compiled on the prospects of entering into negotiations leading to the conclusion of an International Commodity Agreement.

Step 2. Commodity Cooperation Agreements (CCA)

On receipt of this request, the UNCTAD Secretariat shall prepare a report on the commodity concerned. This report shall include information on:

- (a) the trend of prices;
- (b) the trend of production;
- (c) the trend of consumption; and,
- (d) the competitiveness of the commodity in relation to other commodities and in relation to any substitutes which compete, in any form, with the commodity.

This report shall be compiled within 90 days of the receipt of the request referred to in Step 1. The report shall reach a conclusion on whether the commodity concerned would benefit from international regulation. This minimum price shall be reviewed

every 90 days by the International Council.

Step 3.

If the report reaches the conclusion that the commodity in question should not be subject to international regulations the request shall be rejected. Another request may be made at least 270 days after the presentation of the report. The Secretariat shall keep the commodity concerned under surveillance and if, in the opinion of the Secretariat, the circumstances change to such an extent that international regulation of the commodity is considered desirable, the Secretariat shall prepare a report on its own initiative.

(b) the consumption of the commodity; and

Step 4. (c) the importation and exportation of the product

If the report reaches a favourable conclusion, the Secretariat shall convene within 60 days, a conference of all parties interested in the trade of the commodity concerned. The Conference shall decide what form of international regulation should be established for the commodity concerned. This regulation shall be one of the agreements listed in steps 5 to 7. as the basis of negotiation of

Step 5. Commodity Cooperation Agreements (CCA)

- A. As a first stage in the international regulation of the commodity concerned, the conference may determine that a CCA should be established.
- B. The objectives of the CCA shall be to increase international cooperation in the commodity concerned, so as to increase liberalization and to ensure the stability and expansion of international trade in the commodity.
- C. To achieve these objectives an International Council shall be established for the commodity. The International Council shall determine a minimum price for international trade in the commodity. This minimum price shall be reviewed every 90 days by the International Council.
- D. In co-operation with food relief agencies, especially the FAO, the International Council shall, where the product is capable of being made available to developing countries as food aid, coordinate the food aid programmes of exporting Contracting Parties.
- E. It shall be the duty of all Contracting Parties to inform the International Council of any measures affecting:
 - (a) the production of the commodity;
 - (b) the consumption of the commodity; and
 - (c) the importation and exportation of the product from and to all countries irrespective of whether these countries are signatories to this Agreement.
- F. On the basis of this information the International Council shall, in consultation with the UNCTAD Secretariat, formulate proposals which will be used as the basis of negotiation of

MCCAs. Such proposals shall be formulated before the expiry of the CCA, which shall be two years after its entry into force.

Step 6. Multilateral Contract Commodity Agreements (MCCA)

- A. Should the Conference decide that a CCA is inappropriate to the needs of the commodity concerned or on the expiry of the CCA, the second stage of international regulation shall be concluded. In this stage MCCAs shall be concluded.
- B. The objectives of the MCCA shall include, in addition to those of the CCA, the setting of a fair and remunerative price for producers, stable and equitable prices for consumers and a contribution to the development of developing country producers.
- C. To achieve these objectives, the Conference shall decide on a price band, setting maximum and minimum prices. The conference shall also determine the quantities which will be subject to the MCCA. For exporters, this quantity shall represent the average of commercial exports over the previous four years. No exporter shall export in excess of the maximum price. For importers, this quantity shall represent the average of commercial imports over the previous four years. No importer shall import at less than the minimum price.
- D. An International Council shall be established to ensure the success of the MCCA. To this end, it shall periodically review the price band and at the end of each year review the quantities established for importers and exporters, making any necessary adjustments. These adjustments shall reflect the economic performance of all parties to the agreement

during the previous year. In the absence of agreement at the Conference on either the price band or the quantities, these shall be determined by the International Council, as soon as possible.

- E. In co-operation with food relief agencies, especially the FAO, the International Council, where the product concerned is capable of being made available to developing countries as food aid, shall co-ordinate the food aid programmes of exporting Contracting Parties. The International Council, in consultation with the developing country receiving such aid and the FAO, shall endeavour to establish a national food development programme for the country concerned. The aim of such programmes shall be to lessen the dependence of the country concerned on food aid.
- F. On all transactions carried out under the MCCA system, Contracting Parties shall be charged a levy of 1% of the price. These funds shall be delivered to the International Council who shall distribute them to developing country Contracting Parties, to enable them to develop storage facilities. The proceeds of the fund shall be divided equally between developing importing and exporting Contracting Parties.
- G. All Contracting Party exporters shall establish national stock programmes for the commodity concerned under their national agricultural policies. These stocks shall be used to fulfil the objectives of the MCCA.
- H. The duration of the MCCA shall be four years. At the end of the third year, the International Council shall, in association with the UNCTAD Secretariat, formulate proposals for the third stage of commodity regulation.

Step 7. International Commodity Control Agreements (ICCA)

- A. In exceptional circumstances, the conference may decide to establish, as the third stage of the international regulation of the commodity concerned, an ICCA. An ICCA may also be concluded at the end of the MCCA's term of validity.
- B. The objectives of an ICCA shall include the objectives of CCA's and MCCA's. In addition, the ICCA shall endeavour to aid the development of developing countries by encouraging the economic diversification and the processing of the commodity concerned by the developing country producer.
- C. To implement these objectives, the conference shall determine the price band for the commodity concerned and the conditions under which nationally held stocks shall be internationally co-ordinated. To defend this Buffer Stock system, the Conference shall determine export quotas for the largest producers. Such quotas shall be based on past export performance and shall take into account current production potentiality and any preferential arrangements on the part of exporting countries.
- D. An International Council shall be established to ensure the fulfilment of the objectives of the agreement. The International Council shall periodically review the level of the buffer stocks and export quotas. At the end of each year it shall make any adjustments which it deems necessary to ensure the success of the agreement. In the absence of agreement at the Conference on the price band, the coordination of national stocks or the level of export quotas, these questions shall be determined by the International Council within 30 days of the ICCA's entry into force. The

- International Council shall also, within this time period, determine the export quotas of minor exporters.
- E. In co-operation with food relief agencies, especially the FAO, the International Council, where the product concerned is capable of being made available to developing countries as food aid, shall co-ordinate the food and programmes of exporting Contracting Parties. In addition, a national food development programme shall be established through consultations between the developing country concerned, the International Council and the FAO. The aim of such programmes shall be to lessen the dependence of the country concerned on food aid and to encourage national food self-sufficiency.
- F. On all transactions carried out under the ICCA system, Contracting Parties shall be charged a levy of 2%. The funds collected shall be delivered to the International Council who shall distribute them to developing country exporters of the commodity concerned where the export earnings from that commodity are greater than 75% of total export earnings.
- G. Given the objective of the ICCA to encourage the development of the developing country processing industry, the International Council shall establish relations with the Common Fund. Using the funds provided by the Second Window of the Common Fund, the processing, marketing and distribution by developing countries of the commodity concerned shall be actively and positively encouraged.
- H. To enable the efficient operation of the buffer stock system established under the ICCA, the International Council may establish relations with the First Window of the Common Fund.

- I. To ensure the viability of the ICCA the International Council shall collect information on measures affecting;
- (a) the production and consumption of the commodity;
 - (b) the export of the commodity, especially export subsidies or incentives;
 - (c) the import of the commodity, especially any technical regulations governing health and safety standards, packaging, marketing and distribution regulations.

It shall be the duty of all Contracting Parties to provide such information. Taking this information into account the International Council shall recommend to any Contracting Party, the adoption of measures which would facilitate the proper operation of the ICCA.

- J. The duration of the ICCA shall be five years. At the end of the fourth year, the International Council, in association with the UNCTAD Secretariat, shall consider whether the agreement should be renegotiated. Given a positive conclusion proposals shall be prepared for the renegotiation of the agreement.

Miscellaneous Provisions

1. The International Council proposed under steps 5-7 shall adequately represent the interests of importers and exporters. Each group shall have an equal vote.
2. Decisions of the International Council shall be taken by majority, except where the decision relates to the following:
 - (a) the price bands of MCCAs and ICCAs;
 - (b) the quantities relevant under the MCCAs;
 - (c) the level of buffer stocks under ICCAs; and finally
 - (d) the level of export quotas under ICCAs.

In the above cases, decisions will be by 75% majority.

3. Should a 75% majority not be reached, another vote shall take place within 7 days, the majority for this vote being 70%. Should it still not prove possible to reach agreement another vote shall be taken within 4 days, the majority required shall be 66%.
4. Any disputes between Contracting Parties over the interpretation or application of the agreement shall be referred to the International Council. The International Council shall establish a panel to investigate the dispute and it shall reach its decision within 60 days.
5. Contracting Parties should endeavour to maintain the integrity of the agreement.
6. No agreement may impose obligations on any country which is not a Contracting Party.

The proposal meets the doubts expressed by developed countries, especially the perceived interventionist nature of commodity agreements. The proposal moves gradually from non-intervention (CCA) to intervention (ICCA). The reason for the existence of the MCCA as a second step is to enable a limited degree of market intervention to take place. The powers given to each International Council will ensure that the objectives of the agreement are fulfilled and that the economic provisions of each agreement accord with market reality. For developing countries the proposal offers the prospects of both market and price stability, coupled with a provision for food aid in appropriate cases. The ICCA offers these countries a chance to diversify and

develop processing industries of their own. The subsidiary objectives of the IPC are provided for under this proposal.

Acceptance of the proposal rests on a recognition by all countries of the interdependence of the world economy. As the Brandt Report maintains a "mutuality of interests" binds developed and developing countries together.¹³ Acknowledgement of this interdependence after the oil price rise of 1973 led to the formulation of the NIEO and more particularly the IPC. The search for separate solutions and a recognition of past concerns on the advisability of commodity agreements contributed to the demise of the IPC. The proposal made above by amalgamating the two periods of commodity policy reconciles the concerns of the developed nations with the aspirations of the developing nations and offers a new way forward.

¹³ North-South: A Programme for Survival, 33.

AN OVERALL ASSESSMENT.

The GATT

The GATT was designed to preside over the new economic order that would follow the end of the second world war. Its basic objectives were to enhance world trade and achieve a greater liberalization of this trade.

How has the GATT managed to meet these objectives? With respect to industrial products the GATT has been very successful, a degree of success which is not shared with respect to agricultural products. Why should this be so? The provisions of GATT may not be particularly appropriate to the liberalization of agricultural trade. Article XI GATT on the General Elimination of Quantitative Restrictions and its exceptions were analysed. The complaint by the United States against the EEC on the use of a minimum import price for tomato concentrates, is illustrative of the problems associated with the application of Article XI. The GATT has found it near impossible to control measures which indirectly restrict agricultural trade.

One such measure is the variable levy. The levy has been described by most non-member States as the most effective means of protection for the Community's domestic producers. GATT efforts to deal with the variable levy and other non-tariff barriers identified is the Agreement on Technical Barriers to Trade. While laudatory as an attempt to deal with the problem of non-tariff barriers, it was recognised that it was only the first step in a long campaign. Further GATT provisions reveal similar difficulties, for example Article XVI:3, the prohibition on export subsidies for primary products. The Australian and Brazilian complaint concerning alleged EEC subsidization of sugar exports reflect the difficulties of interpretation inherent in this provision and GATT attempts to solve these difficulties; the Code on Subsidies. Further problems of application and interpretation

exist with respect to Article XIX of the GATT, Emergency Action on Imports of Particular Products. The rigidity imposed by this Article has led to the proliferation of agreements which directly contravene the GATT provisions.

This discussion emphasizes the difficulties inherent in the application of the GATT provisions to agriculture. But it also raises a more important question. Is the concept of GATT applicable to agricultural trade? As stated earlier, GATT work in the area of agricultural trade reflects the legacy of a misconception. Agriculture by its very nature is protectionist. The waiver granted to the United States in 1955 for its agricultural programme is evidence of this nature. GATT attempts to deal with the protectionist nature of agriculture, enshrined as it is in domestic agricultural programmes, have been singularly unsuccessful. The Harberler report identified the problems associated with these programmes and recommended the adoption of agricultural policies based on the deficiency payments system. The results of the deliberations of the Panel of Experts were negligible.

The one concrete result of the report, Committee II, did not bring about any substantial change in the nature of domestic agricultural programmes. A similar lack of success is exhibited when one considers the various rounds of trade negotiations, these have not led to any noticeable change. The new round of trade negotiations promises to be more relevant to agriculture. The formation of a group to press for reform of GATT rules on agriculture ensures that the topic will remain major priority of the new round. However, the policies of some Contracting Parties may frustrate substantial progress in the liberalisation of agricultural trade. One must doubt whether the GATT, no matter how many recommendations it may make, will ever liberalise something which is inherently protectionist and which the Contracting Parties to the GATT wish to remain protectionist. Against this background, any proposals leading to the liberalisation of

agricultural trade, may not be acceptable to the Contracting Parties. If the GATT is not an appropriate body for liberalising world agricultural trade, the question must be asked. Is any organization capable of bringing greater order to agricultural trade?

The UNCTAD

Could this institution make a positive contribution to world agricultural trade? The answer is a guarded no. The basic philosophy of this institution is development oriented. In relation to certain agricultural products it has chosen commodity agreements.

The concern of such agreements is the enhancement of the development process through increasing the returns received by developing country commodity producers. This chosen method is not free from complications. The determination of the price band, the operation of the buffer stock system, the control of production through the implementation of export quotas, are all elements where the margin for error is slight, if any agreement is to be effective. Moreover, it is the prospect that restraints will be imposed on domestic producers that inhibits some developed countries from entering into such agreements. In the wake of the oil crisis, the formulation of the IPC offered the possibility that the demands of developing countries for a New International Economic Order would be met and developed countries would be assured security and stability of supply. However, it was soon recognised that oil was an exceptional case and this mollified the concerns of the developed world.

The débâcle of the Common Fund negotiations emphasized that a new economic order was not being created but rather that the old one was being tampered with. Given this situation, the IPC was subject to intense scrutiny and realising the essentially negative

effects it would have, developed countries retreated from the positions they adopted at Nairobi. Consequently the attraction of commodity agreements declined and emphasis was shifted to other aspects of the IPC. Realising that UNCTAD and, more especially, commodity agreements do not provide a complete solution to the problems of agricultural trade, is the next step to establish another institution to regulate international trade in agricultural products?

A hint of realism

Since it would prove impossible to establish a new institution to govern the conduct of world trade, the only course of action is to work within the existing institutional framework.

In relation to the GATT this work will consist of curing the misconception from which it suffers in relation to agriculture. An effort is needed to make the rules applicable to the agricultural policies of the Contracting Parties. A number of suggestions have already been made including:

- (a) the surrender by the United States of the waiver granted in 1955;
- (b) the continuation of work on the problem of non-tariff barriers, especially the problems posed by the existence under the CAP of the variable levy system;
- (c) the establishment within the Subsidies Committee of sectoral sub-committees to collect information on the effects of export subsidies on primary products granted by Contracting Parties. The sub-committees will make recommendations for the scaling down and eventual abolition of such subsidies. The aim will be to achieve a balance of advantages and obligations between the Contracting Parties; and
- (d) the adoption by the Contracting Parties of the proposed code on safeguards, to control the use of Article XIX by

country accommodating proposals for its update, and the abolition of VER's and OMA's concluded outside the framework of Article XIX.

The implementation of these proposals would bring about a substantial change in the nature of GATT obligations with respect to agriculture. At the same time such proposals would not interfere with the autonomy currently exercised by the Contracting Parties over their domestic agricultural policies.

Looking beyond these changes to the detailed rules of the GATT, several changes were advocated to the general concept. These included separate agricultural trade negotiations and codes of conduct for domestic agricultural policies. Given a failure to implement these proposals, what will become of the GATT? Will it, as Hudac suggests, be transformed into a GABB (General Agreement on Better Bargaining)?¹

This question revolves around a concern over the utility of detailed substantive rules and the role of these rules is international trade regulation. The provision of detailed substantive rules presupposes the existence of some consensus on their content. However, given disputes between the Contracting Parties over the interpretation of the GATT rules as they apply to agriculture, it is suggested that this underlying consensus is no longer present. In relation to agriculture a GABB, rather than a GATT, now exists. The proposals made above would create a new consensus, a new set of obligations. This would facilitate a return, albeit limited, to the 1947 situation. This would ensure that the cause of the problem rather than the evidence of the problem will be discussed, irrespective of the solutions advocated.

In respect of UNCTAD, a proposal was made for a new form of commodity negotiations. The proposal recognises developed

¹ Hudac. "GATT or GABB: The future design of the General Agreement on Tariffs and Trade" (1970-71) 80 YLJ 1299.

country concerns and satisfies developing country demands. The four requirements, based on past experience, which are necessary for a successful commodity agreement are included in the proposal. The proposal addresses of the reasons for limited progress on individual commodity agreements; the hesitation/reticence of some developed countries to move from their general statements of support for commodity agreements towards accepting the obligations of membership.

One can find support for this statement in the attitude of the EEC towards commodity agreements and it is to this body and the role it could play, that the final section of this assessment addresses itself.

The Role of the European Community

It was recognised, in the introduction to this part of the paper, that Europe is seen by many as the only group of countries now able to fill the leadership role in international negotiations. Europe, more especially the European Community, as a significant exporter of agricultural products and the worlds largest importer of agricultural products, is perfectly suited to fill this role.

Before such a move is possible the EEC will have to revise its thinking on international markets. Josling presents four possibilities for this revision:²

- "(a) to abandon all concern with international markets and adopt a fortress Europe policy;
- (b) to extend the existing network of bilateral and plurilateral agreements on trade;

2 Josling T. "The CAP and International Commodity Agreements." in ed Tracy and Hodac Prospects for European Agriculture (1982)

- (c) to adapt domestic policy to allow a greater impact of world market conditions on internal trade; and finally
- (d) to re-orient its thinking on international matters to that of an exporter."

Options (a) and (b) would preserve the current autonomy of the CAP, whilst the latter option would also indicate to other countries their role in the supply of Europe's food needs. On the other hand, options (c) and (d) involve a substantial re-think of domestic policy, leading to significant adjustments within the Community. As such these options would involve a tampering with the delicate economic, social and political balance achieved within the CAP.

For this reason, and also because any change along these lines would be evolutionary, it is suggested that the re-think should settle on option (b) with some concessions being made to the reluctant liberalism of (c). In this way the EEC will enhance its position through making part of its production subject to world trading conditions. This would enable it to play a more active and constructive part in international trade negotiations. These negotiations should not interfere with the essential elements of the CAP's operation. It is essential that a balance be struck between the two elements of Community policy. For example, it involves a realistic assessment of what is considered essential to the operation of the CAP. For those elements which are considered non-essential, a deficiency payments scheme or direct income aid scheme should be introduced.

This change of policy on the part of the Community should enable it to play a more constructive role. In addition, the adoption of both a realistic and consistent policy towards international markets would make it easier to match the economic, social and political demands of domestic farmers with the growing economic interdependence of all countries. In this way some progress may be made towards the effective regulation of international agricultural trade.

Should efforts to achieve effective international trade regulation fail, the Community will be thrown back to the network of bilateral and plurilateral agreements which it has concluded. It is these agreements which Parts III and IV of this paper discuss.

The previous part of this paper reflected on the EEC's relations in the international arena. The examination of the two major international trade institutions (GATT and UNCTAD) noted their failure to achieve their objectives in the international regulation of agricultural trade. It also questioned whether such regulation was in fact desirable. In the light of the negative answer to this question, a basic philosophy for the development of an agricultural trade policy was formulated. The policy would rest on two pillars. An extension of the existing network of bilateral and plurilateral agreements trade and especially agricultural trade. The second pillar is adaptation of the CAP to allow for a greater impact of world market conditions on the operation of the CAP.

Since these Agreements/Arrangements will form the basis of the Common Agricultural Trade Policy, it is necessary to outline how they developed and how the EEC has provided for the development of agricultural trade. The enlargement of the EEC to include Spain and Portugal, affords an opportunity to reform the CAP and to make changes to these bilateral agreements. For a policy developed to suit the needs of the original six, amended to suit the needs of the nine, an opportunity now exists, when the EEC has doubled its original membership, to add a new dimension to the CAP. For over twenty years it has served the internal needs of the EEC. Now an opportunity exists to turn the policy into a positive instrument of external economic policy. In this light, this part of the Paper examines EEC relations with the countries of the Mediterranean, EFTA and Eastern Europe as well as relations with developed and some developing countries.

PART III. ASSOCIATION POLICY

INTRODUCTION:

The previous part of this paper reflected on the EEC's relations in the international arena. The examination of the two major international trade institutions (GATT and UNCTAD) noted their failure to achieve their objectives in the international regulation of agricultural trade. It also questioned whether such regulation was in fact desirable. In the light of the negative answer to this question, a basic philosophy for the development of an agricultural trade policy was formulated. The policy would rest on two pillars. An extension of the existing network of bilateral and plurilateral agreements trade and especially agricultural trade. The second pillar is adaptation of the CAP to allow for a greater impact of world market conditions on the operation of the CAP.

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CHAPTER 1: THE MEDITERRANEAN ARENA.

The early period

"The European Community since its creation always felt the need to establish privileged relations with its Mediterranean neighbours. The need for an active Mediterranean policy was self-evident, countries such as Greece, Portugal, Spain and even Turkey had a natural vocation, explicitly recognized in the Treaty to be involved in the process of European integration. How could the European Community ignore the Maghreb while Algeria was still an integral part of France and Morocco and Tunisia had only been independent for a few years?"

As Cova¹ recognises above the EEC's relations with the Mediterranean stems from historical, social, economic and cultural links and from the fact that Article 237 of the Treaty allows any European state to become a member of the EEC. The first applicant under Article 237, Greece, is now a member.² Turkey has recently applied for membership.

The first country to apply for association (Article 238) with the EEC was Greece, this application prompted a similar application from Turkey. This latter application is illustrative of two facets of the relations of other countries with the EEC. Firstly, the political nature of most applications. In the case of Turkey, it was the consideration that Turkey wanted to become an integral part of Europe and in pursuit of this goal it did not, and does not, wish Greece to be in a more favourable position. Secondly, and more important in respect of the other Mediterranean Agreements, is

¹ Cova C. The Arab Policy of the EEC, 1.

² An Association Agreement was signed with Greece in 1961. On January 1 1981, Greece became the tenth member of the EEC.

what Tovias has labelled the 'drag effect'.³ In other words, once one discriminatory trade arrangement is made, other countries react against this by claiming similar, or greater, reductions in products for which they are directly competitive with the country who has concluded the discriminatory trade arrangement. In any event, Turkey's request for an association agreement received a favourable response from the EEC and an agreement was concluded in 1963.⁴ The agreement recognised the long-run desire for Turkey to be an integral part of Europe by setting a target date for accession in January 1995.⁵ The Agreement envisaged that there would be three stages to the relationship; a preparatory period; a transitional phase; and, a final phase.⁶ This latter stage would be based on the establishment of a customs union between the parties entailing greater co-ordination of the parties economic policies. Even before the end of the preparatory period, strains were developing in the association. In spite of this an Additional Protocol was negotiated which provided for the establishment of a customs union between the parties.⁷ Even so, it was obvious that Turkey was becoming increasingly dissatisfied with the effects of the Agreement.

One reason for this dissatisfaction was the growing range of EEC agreements with other Mediterranean Agreements. The drag effect which had benefitted Turkey in 1963 was now beginning to work against it. One of the Declarations of Intent attached to the Treaty of Rome had in fact envisaged the expansion of traditional

³ Tovias A. *Tariff Preferences in Mediterranean Diplomacy*.

⁴ Agreement establishing an Association between the EEC and Turkey see OJ1977 L361/29.

⁵ Article 2(2) of the Agreement stated that in order to attain the objectives set for Association a Customs Union would be established.

⁶ Article 2(3) of the Agreement.

⁷ Additional Protocol (1970) concluded by Council Reg.2760/72.

trade links between the EEC and certain countries of the Mediterranean.⁸ The Morocco Protocol, declared "the readiness" of the EEC to enter into negotiations with Morocco and Tunisia, with a view to concluding conventions of economic association.⁹ The lack of any guiding principles for this association and a greater concern with internal developments slowed the realization of the aims of the Protocol. Eventually after long negotiations, agreements were concluded in 1969 with Morocco and Tunisia.¹⁰ They offered a range of agricultural concessions to these countries, the effects of which were blunted by restrictions placed on access to the EEC market.¹¹ Once again the drag effect came into operation. Anxious to preserve the position of Spanish and Israeli exporters of citrus fruits on the EEC market, the EEC was faced with a dilemma.

It applied to the GATT for a waiver from its obligations under Article 1 to enable it to grant concessions to Spain and Israel.¹² The Working Party established to consider the request, could not reach agreement on the need for such a waiver and did not even attempt to draw up a text. It merely confined itself to reporting the views expressed within the Working Party.¹³ The EEC reacted to this by concluding Preferential Trade Agreements with Spain

⁸ For example the Morocco Protocol envisaged agreements between the EEC and Morocco and Tunisia. The Treaty of Rome also allowed for the continuation of the established trading relationship between France and Algeria.

⁹ See Atlantic Paper 1/72 Europe and the Maghreb.

¹⁰ JO L/3197.

¹¹ The Agreements offered tariff concessions of between 50-80%. The generosity of this offer was restricted by the imposition of seasonal calendars, minimum import prices and the exclusion of a number of products of export interest to Morocco and Tunisia.

¹² BISD 17th Supp.61.

¹³ Ibid.

and Israel, thereby implementing the agricultural concessions for which it had sought a waiver.¹⁴ The reaction of the United States to this action was to lodge a complaint against the EEC in the GATT, an action which was dropped when the EEC agreed to concessions for US exporters of citrus fruit.¹⁵ What had happened though was irreversible. The EEC responding to the pressures exerted by various Mediterranean countries had concluded a mosaic of agreements, simply reacting to pressures rather than forging a comprehensive plan for this area. As Dahrendorf remarked,¹⁶

"I am convinced that the commercial policy instruments at our disposal in connection with our current agreements with Mediterranean countries can help very little towards attaining the objective we have set for ourselves, which is to contribute to the creation of long term conditions for development and economic stability in Mediterranean countries."

In an effort to achieve this objective, the Community decided to formulate a global Mediterranean Policy.

¹⁴ The agreement with Israel was superseded by a 1975 Agreement. The Spanish Agreement governed the relationship between Spain and the EEC until January 1 1986, the date of Spanish accession to the Community. See Council Reg.1524/70 OJ 1970 L182/1.

¹⁵ This arrangement is referred to as the Casey/Soames Agreement.

¹⁶ EC Bull.4/71, 38.

Towards the Global Policy

In December 1973, the Foreign ministers of the nine member States declared,¹⁷

"The EEC will implement its undertakings towards the Mediterranean in order to reinforce its long-standing links with these countries. The nine intend to preserve their historical links with the countries of the Middle East and to co-operate over the establishment and maintenance of peace, stability and progress in the region."

The new policy would move beyond the purely commercial relationships established during the 1960's and encompass economic and regional development and even political co-operation. These aims were to be achieved by the conclusion of wide-ranging agreements between the EEC and the Mediterranean States.

The policy was to cover the following states; Algeria; Morocco; Tunisia;¹⁸ Egypt; Jordan; Lebanon; and Syria.¹⁹ The overall plan treated the Mediterranean as an homogenous area. Despite the similarities between the Mashreq and Maghreb countries listed above, problems existed with the extension of the policy to include Israel, a country which the seven countries listed above did not recognise at the time. Turkey, Malta and Cyprus also come within the scope of the policy, despite the fact that Turkey hopes to join the EEC and the other two have agreements leading to the establishment of a customs union between them and the EEC.²⁰ Whilst Yugoslavia bears no economic similarity to the above

¹⁷ Copenhagen Declaration ECBull 12/73 Annex 1

¹⁸ These three countries are referred to as the Maghreb.

¹⁹ These four countries are referred to as the Mashreq.

²⁰ See footnotes 4 to 7 above.

countries, save that they are all classified as developing countries. Despite the heterogeneity of the countries covered, the EEC persisted in a global policy. The negotiation of individual agreements with all these countries reflect the heterogeneity of the area and seriously call into question the 'global' aspect of the 'global' policy. Irrespective of this fact, the global policy still provides a framework in which relations between the EEC and the Mediterranean can be advanced.

All the agreements aim to enhance the objectives of the policy, especially the economic development of the area. This is to be achieved through a continuation of the commercial clauses of previous agreements; complete industrial free trade and a range of agricultural concessions. In an effort to aid the development of the Mediterranean, most of the agreements reached include a Protocol on technical and financial co-operation.²¹ The aim of the financial co-operation is to foster capital projects in the production and economic infrastructure encouraging the diversification of the economic structure of the countries, the promotion of the industrialization and the modernization of agriculture.²² Each of the Agreements establish a Co-operation Council which has the power to make decisions which facilitate the attainment of the objectives of the Agreement.²³ Each of the agreements allow for a periodic review of its provisions, an article which is especially important considering the impact enlargement is likely to have on the success of these Agreements.²⁴

Before going on to discuss the agricultural provisions of these Agreements, it is worthwhile to analyse the reactions of other countries to the development of the EEC's Mediterranean Policy.

²¹ E.g. Co-operation Agreement between the EEC and Algeria OJ 1978 L 263/1.

²² Ibid 4, Article 4 of the Agreement.

²³ Ibid 22, Article 42.

²⁴ Ibid, Article 53.

This will assist in the examination of the effects of these agreements, not only on the Mediterranean countries themselves but also the effects of the Agreements on third countries.

The Agreements in the GATT

As previously explained, the GATT is an organization charged with the responsibility for the conduct of world trade. The Association agreements, free trade agreements and co-operation agreements concluded by the EEC must conform to the provisions of the GATT and especially the provisions of Article XXIV on the creation of customs unions and free trade areas. To recapitulate, Article XXIV establishes various standards which any arrangement must meet before it can be accepted as compatible with the GATT. These include; the agreement must facilitate trade between the parties and not constitute an obstacle to trade or raise barriers to other parties trade;²⁵ duties and other regulations of commerce should not be made more restrictive;²⁶ a plan should be established for the formation of the free trade area/customs union within a reasonable length of time;²⁷ and finally duties and other restrictive regulations should be eliminated on substantially all trade between the parties.²⁸ How have the agreements reached between the EEC and various Mediterranean countries measured up to these requirements?

The Association Agreement with Turkey was criticised by the GATT Working Party, established to consider its compatibility with the General Agreement, since it would not lead to the

²⁵ Article XXIV(4).

²⁶ Ibid, paragraphs 5(a) and 5(b).

²⁷ Ibid, paragraph 5(c).

²⁸ Ibid, paragraph 8.

formation of a customs union within a reasonable length of time.²⁹ The Agreements of 1969 with Morocco and Tunisia were also criticised because of the lack of a plan or schedule leading to the formation of a free trade area.³⁰ Another ground of criticism was that the agreements did not cover substantially all the trade between the parties, owing to the exclusion of large areas of agricultural trade.³¹ A similar criticism was expressed when the GATT considered the 1970 Agreement between the EEC and Spain.³² These criticisms were repeated when the GATT had before it the Association Agreement with Malta³³ and the Additional Protocol to the Turkish Association Agreement.³⁴ With respect to the Association Agreement with Cyprus, the Working Party, in addition to the criticisms noted above, pointed to the lack of commitment on the part of the EEC to establish a customs union between itself and Cyprus.³⁵ Moreover, the Working Party was concerned about the nature of the rules of origin, arguing that these constituted the imposition of restrictive regulations on trade.³⁶

The Agreements concluded by the EEC since the inception of the Global Mediterranean Policy have met with similar criticisms

²⁹ BISD 13th Supp 59.

³⁰ BISD 18th Supp 149.

³¹ Ibid, 156.

³² BISD 16th Supp 166.

³³ BISD 19th Supp 90.

³⁴ Ibid, 102 and BISD 21st Supp 108.

³⁵ BISD 21st Supp 94.

³⁶ Ibid, 105.

when they were considered in GATT Working Parties.³⁷ However, a different approach is obvious. Whilst members of the Working Parties still criticise, the EEC has argued that in the light of Part IV of the General Agreement and the general objectives of the GATT, these agreements are compatible with the GATT even if they are technically in breach of the provisions of Article XXIV.³⁸ However, one must question this approach, as it is extremely doubtful whether part IV of the GATT takes precedence over Article XXIV. Whilst it has been argued that the Agreements are a reflection of the changing nature of world trade and a courageous and constructive effort to develop relations between developed and developing countries, criticisms of the Agreements remain.³⁹ All of the Working Party reports reach no firm conclusion on the compatibility of the Agreement with the GATT and content themselves with reporting the divergence of views.⁴⁰ It is obvious that the Agreements do not satisfy the provisions of the GATT as they do not cover substantially all trade. This conclusion comes from an examination of the agricultural trade concessions made by the EEC under these various agreements.

Agricultural Concessions?

Certain agricultural provisions are common to all the agreements. For example, Article 23 of the Algerian Agreement provides that,⁴¹

³⁷ BISD 23rd Supp 55 (Israel); 24th Supp 80 (Algeria); 24th Supp 88 (Morocco); 24th Supp 97 (Tunisia); BISD 25th Supp 114 (Egypt); 25th Supp 123 (Syria) 25th Supp 133 (Lebanon); 25th Supp 143 (Jordan).

³⁸ e.g. 24th Supp. 80,82.

³⁹ See for example Gaines, Sawyer and Sprinkle "EEC Mediterranean Policy and US Trade in Citrus" (1981) 15 JWTL 431.

⁴⁰ e.g. 23rd Supp 55,63.

⁴¹ OJ 1978 L263/1,19.

"Should specific rules be introduced as a result of the implementation of its agricultural policy or modification of the existing rules or should the provisions on the implementation of its agricultural policy be modified or developed, the EEC may modify the arrangements laid down in the Agreement in respect of the products concerned."

Whilst the EEC agrees to take Algeria's interests into account, it is obvious that the EEC considers the concessions to be unilateral and as such revocable at any time. The 'carte blanche' provided by this provision is modified to the extent that the balance of advantages stemming from the Agreement must be maintained.⁴² Note, that it is the balance of advantages which is to be maintained rather than the balance of agricultural advantages. Algeria's only means of influencing EEC policy, with regard to any modification, comes through the operation of the Co-operation Commission or during the periodic reviews of the Agreement. With respect to products to which the agreements do not apply, a joint declaration, to most of the agreements, declare the parties readiness to foster within the limits imposed by the agricultural policies of each party, the harmonious development of agricultural trade.⁴³ Whilst acknowledging the potential of this provision to future trade relations, it is important to analyse current concessions to determine whether any potential exists for extending the agreements.

It is possible to divide the agricultural concessions, given by the EEC in the Mediterranean agreements, into three groups; the Maghreb (Algeria, Morocco, Tunisia), the Mashreq (Egypt, Jordan, Lebanon and Syria) and the others (Israel, Yugoslavia, Cyprus, Malta and Turkey). With respect to the Maghreb, the concessions

⁴² Idem. Article 23(2) states that if the Community modifies the arrangements made by the Agreement for products subject to a COM, "it shall accord imports originating in Algeria an advantage comparable to that provided for in this Agreement".

⁴³ OJ 1978 L 263/1,109.

given range from 100 to 20% reduction of customs duties on various products. More than 80% of agricultural exports from the Maghreb to the EEC are covered by these Agreements.⁴⁴ The concessions are on particularly important export items such as citrus fruits, tomatoes, and potatoes.⁴⁵ As with other Mediterranean agreements, the concession on fresh lemons is subject to the observance of the EEC reference price for this product.⁴⁶ A special arrangement exists governing the export of olive oil. It provides that if these countries levy a special charge of exports, the EEC will reduce the import levy on olive oil.⁴⁷ In relation to processed agricultural products, concessions are given for preserved oranges, preserved tomatoes, tomato concentrate and fruit salad.⁴⁸ However, the concession, in the form of a customs duty reduction, is limited by an annual tariff quota. A levy reduction also exists for Maghreb exports of cereal residues.⁴⁹ The bilateral nature of the Agreements concluded by the EEC has allowed them to take account of the individual interests of such countries. For example, in relation to Algeria and Tunisia, the agreements provide for a reduction of custom duties on imports of wine. This is subject to an annual tariff quota.⁵⁰ A

⁴⁴ Cited in Cova *op cit* n 1.

⁴⁵ The concessions for these products range from 40 to 80% and are restricted by a Seasonal Calendar. Each of the Agreements has a joint declaration on citrus fruits, which states that should abnormal conditions of competition jeopardise the advantages given, the Parties would seek appropriate solutions.

⁴⁶ Article 15(3) Algerian Agreement *op cit* n 41,14.

⁴⁷ See Articles 16 and 17 of the Tunisian Agreement OJ 1978 L 265/1,13.

⁴⁸ Article 19 Algerian Agreement *op cit* n 41,15.

⁴⁹ See Article 23 of the Moroccan Agreement OJ 1978 L 264/1.

⁵⁰ Article 20 Algerian Agreement *op cit* n 41,16-17.

reduction is also given to Morocco for exports of durum wheat to the EEC.⁵¹

The Co-operation Agreements concluded with the Mashreq countries are roughly similar to those concluded with the Maghreb countries, account being taken of differences in production. For example, the Maghreb countries receive an 80% reduction in customs duties for oranges, the equivalent concession in the Mashreq agreements lists the reduction at 60%.⁵² Once again, differences within the Mashreq countries reflect production in those countries. Egypt, for example, has a levy reduction on rice, subject to an annual tariff quota.⁵³ Another example is the customs duty reduction given to Syria for exports of dehydrated or evaporated onions and garlic.⁵⁴

The pattern emerging from the analyses of the Agreements with the Maghreb and Mashreq, is that the EEC whilst giving concessions, limits the effects of such concessions by either tariff quotas, import/seasonal calendars or observance of the EEC reference price. The level of concession granted also depends on the nature of production in the particular country as reflected by the differing rates of concessions given for the same product. This pattern is reinforced when one examines the Agreements reached with Israel, Malta and Cyprus. For example, Israel has been granted an 80% customs duty reduction on exports of avocados,⁵⁵ whereas the corresponding figure for the Mashreq and Maghreb is

⁵¹ Article 16 of the Agreement states that the "Community shall take all measures to ensure that the levy on imports into the Community of durum wheat is the levy less 0.5 ECU/tonne.

⁵² See Agreement with Jordan OJ 1978 L 268/1.

⁵³ Article 19(1) OJ 1978 L 266/2,11.

⁵⁴ Article 18 OJ 1978 L 269/1,8.

⁵⁵ Article 8 Protocol 1 OJ 1975 L36/3.

only 60%. The concession given to Israel for exports of apricot pulp is a 70% reduction in customs duties within an annual tariff quota of 150 tonnes,⁵⁶ for Tunisia the reduction is 30% but the quota is 4300 tonnes.⁵⁷ This variety of concessions is also evident in the EEC's relationship with Yugoslavia, even though the range of products differs significantly owing to a different production structure in Yugoslavia.⁵⁸

This range of concessions to Mediterranean countries concerned Turkey. Turkish officials argued that since Turkey was the only country in the Mediterranean which anticipated joining the EEC, it should have the most advantageous trade concessions. In recognition of the Turkish position, Decision 1/80 of the Association Council recommended measures to develop the agreement.⁵⁹ As implemented, this decision requires the abolition of all customs duties which still applied to Turkish exports of agricultural products. In respect of these duties, those less than 2% were to be abolished from January 1, 1981. All other customs duties were to be abolished over a period extending to January 1 1987.⁶⁰ However, Turkish exports are still subject to import calendars and tariff quotas. The decision also recognised the effect of Article 33 of the Additional Protocol which enjoins the parties to,⁶¹

⁵⁶ Ibid, Article 10.

⁵⁷ Article 21, op cit n 47,16.

⁵⁸ Co-operation Agreement between the EEC and Yugoslavia, OJ 1983 L 41/1.

⁵⁹ For the implementation of this decision within the EEC see the Council Reg.3590/82 OJ 1982 L 375/1.

⁶⁰ Article 3 of Dec 1/80.

⁶¹ Op cit 7.

"pinpoint those agricultural sectors in which Turkey considers it is ready to bring its system into line with the EEC system so as to arrive progressively at the application of the latter's."

The relationship between the EEC and Turkey has improved as a result of Decision 1/80, to the detriment of other Mediterranean countries. This has caused increased dissatisfaction with the functioning of the Co-operation Agreements. This stems from:

- the limited value of the concessions, even though the customs duties concessions are generous, they are limited by import/seasonal calendars, tariff quotas and observance of the EEC's reference price system;
- the divergence of concessions on similar products given to different countries in the Mediterranean; and finally,
- the application of the safeguard clause which allows the EEC to suspend concessions once the EEC market is disturbed.

Given these criticisms, how can these agreements be improved? This question is all the more relevant given the enlargement of the EEC to include Spain and Portugal.

The Impact of Enlargement

An exchange of letters annexed to the EEC — Tunisia Agreements declares,⁶²

"Because of the importance of citrus fruits for the Tunisian economy, Tunisia considers that in the event of the EEC being enlarged to include other Mediterranean countries there will be a re-examination in accordance with Article 49 of the Agreement ... of the arrangements provided for in Article 15 [agricultural trade concessions] in order to

⁶² Op cit n 47,

safeguard the advantages resulting from its implementation."

The enlargement of the EEC to include Greece did not significantly affect the content of the Co-operation Agreements. The accession of two countries which produce similar products to those of the Mediterranean countries will have a significant effect on these arrangements. An examination of the Agreements, previously concluded, between the EEC and Spain and Portugal will show what products will be affected.

To start with Portugal, Protocol 8 of the 1972 Free Trade Agreement concluded with Portugal, concerns the treatment applicable to certain agricultural products.⁶³ Article 5 of the Protocol lists the concessions given by the EEC on products ranging from new potatoes, tomatoes, sweet peppers to strawberries. The reduction in the level of customs duties for these products ranges from 50% to 15%, whereas for Maghreb and other countries of the Mediterranean the range is 60% to 40%.⁶⁴ Adding this level of concessions to the fact that Portugal will no longer be subject to the import calendars laid down in the Agreement, it is obvious that the quality of concessions granted to the Mediterranean countries will deteriorate as a result of Portuguese accession. In addition, the tariff quotas which formerly applied to Portuguese exports of wine and tomatoes will also cease to operate, further damaging the interests of Mediterranean exporters of these products. In relation to Spain a similar picture emerges. The 1970 Preferential Trade Agreement granted agricultural concessions in the form of a 40% reduction of customs duties for

⁶³ Agreement between the EEC and the Portuguese Republic JO 1972 L 301/164.

⁶⁴ Ibid, 345

products such as citrus fruit, subject to import calendar and observance of the EEC reference price.⁶⁵

The net effect of the Iberian Accession will be a removal of restrictions which limited their exports to the EEC. As a result, the concessions obtained by other Mediterranean countries will lessen in value, as their competitive position, which used to be better than that of Spain or Portugal, deteriorates. Most countries will be affected by the enlargement to differing degrees, significant damage could result to the trade interests of Morocco which exports 98% of its agricultural exports to the EEC. Other seriously affected countries include Israel, Egypt, Tunisia, Cyprus and Turkey.⁶⁶ The nature of the EEC's reaction to the dissatisfaction of the Mediterranean countries with the present agreements and to the problems associated with the enlargement of the EEC, will determine how far it is able to achieve the objectives it set for itself when devising the Global Mediterranean Policy.

EEC Reaction to Enlargement

As the Commission recognise there will be no single, comprehensive solution to the problems thrown up by enlargement.⁶⁷ Any solution to the problems caused to the Mediterranean countries will involve not only an alteration of these Agreements but also internal reform within the EEC and perhaps the Mediterranean countries themselves.

⁶⁵ JO1970 L 182/1 Annex 1 of the Agreement Article 7.

⁶⁶ See COM (82) 352. On a Mediterranean policy for the enlarged Community. See also Toviás A. EEC Enlargement: The Southern neighbours.

⁶⁷ COM (84) 107 Commission Report to the Council on the exploratory talks with the Mediterranean countries and the Applicant countries: Commission proposals concerning the implementation of a Mediterranean Policy for the enlarged Community.

Such an approach is not favoured by the EEC, since the In recognition of this fact, the Commission realised that problems within the EEC have obstructed the effective operation of the Mediterranean Agreements.⁶⁸ One of the most pressing of these problems is the North-South dichotomy manifested by the operation of the CAP. The inadequacies of the CAP vis-a-vis Mediterranean products makes it impossible for the EEC to develop its relations with the Mediterranean countries beyond those laid down in the Agreements. The review articles and the declarations on the development of harmonious trade relations in agricultural products have not led to any significant changes in the nature of the established relationship.

This analysis of the problem is shared by the Mediterranean countries themselves.⁶⁹ They point to the experience of the 1970's when the EEC was confronted with recession and chose to resolve common problems unilaterally rather than in the spirit of co-operation in which the agreements were reached. They are concerned about the inherent contradictions which seem to plague the CAP and, quite rightly, are worried about the effect of enlargement, given the EEC's predilection for the use of safeguard measures. However, they recognise that enlargement offers an opportunity similar to that presented in 1973. The EEC can make a positive contribution to the stability and economic development of the area. They also realise the temptation of the EEC to effect enlargement at the expense of third countries. To this end, they have suggested that their agricultural products should be treated as EEC products in return for them playing the necessary role in a common Mediterranean agricultural products policy.⁷⁰

⁶⁸ Ibid, 11.

⁶⁹ Ibid, 5.

⁷⁰ Ibid, 6.

Such an approach is not favoured by the EEC, since the Mediterranean countries could not become part-time members of the EEC.⁷¹ This approach would also involve problems with the decision making machinery and the application of the financial mechanisms of the CAP. The Commission has recommended the continuation of the present bilateral trade agreements with an increased emphasis on technical and financial co-operation.⁷² In recognition of the fact that such co-operation does not fully compensate the Mediterranean countries, the Commission has also proposed the continuation of agricultural concessions.⁷³ The products concerned should be able to compete with internal production on the EEC market. However, such exports must comply with the reference price system. The EEC does not envisage abandoning the possibility of using safeguard measures. Rather it hopes that the application of these measures will be rendered unnecessary by setting a quantitative limit for Mediterranean exports. This limit would be based on the past export performance of these countries. This does not constitute a radical departure for the EEC nor does it meet the dissatisfactions expressed by the Mediterranean countries over the scope of the agricultural concessions. As developed, this framework attracted interest from several Mediterranean countries. Progress in the Commission proposals, does come from an enhanced form of agricultural co-operation. The Commission recommend the strengthening of this aspect of the relationship, to further the broader objective of establishing complementarity of production rather than competitiveness. One aspect of this increased agricultural co-operation is the reduction of dependence on food imports for the Mediterranean countries. This is to be achieved by the conclusion of Multiannual Supply Agreements for

⁷¹ Ibid, 11.

⁷² Ibid, 15.

⁷³ Ibid, 16.

agricultural products (MSAs).⁷⁴ The rationale behind MSA's is the increasing number of requests received by the EEC, from third countries, for predictable and secure terms for the multiannual supply of products of interest to them. MSA's therefore, go beyond the scope of the current bilateral trade agreements and are primarily directed towards "food security and development aid". The existing EEC system (the export refund system) given its relation to the world market price is unable to satisfy these demands. In a Commission study of MSAs, it was emphasised that the development of such an instrument would allow the EEC to play its role in the search for global food security.⁷⁵

The MSAs concluded would need to be flexible and would involve the following elements. Price conditions, the price paid for the product under the MSA should be as near as possible to the prevailing world price. The Commission envisaged that such agreements should cover a three to five year period with annual quantities would be set in advance. In the event of crop failures etcetera on the EEC market, such agreements should also provide a safeguard clause which would allow domestic demand to be satisfied before the MSA was fulfilled. As developed, this framework attracted interest from several Mediterranean countries notably Algeria, Egypt, Morocco and Tunisia. Each of these countries has different reasons for wanting to conclude such an agreement. Egypt, for example, sees it as part of the national food strategy which it has already established. Tunisia feels that it would make up for the detrimental effects of enlargement of the EEC and Morocco sees it as a way of decreasing the dissatisfaction it expresses over the operation of the Co-operation Agreement.⁷⁶

⁷⁴ Idem. See also COM (81) 429 Negotiation of framework Agreements relating to the multiannual supply of agricultural products.

⁷⁵ Ibid, COM (81) 429, 1.

⁷⁶ Cova C. The Arab Policy of the EEC: Long Term Supply Contracts.

Despite the attractions of the MSA proposal, it has several shortcomings. It would mean that the EEC would become a net agricultural exporter. Since the prices under the MSAs will be the prevailing world prices, the EEC would be faced with a high budgetary cost, given the export refund system. The organization of trade in this way also gives rise to the fear that such agreements will encourage over-production within the EEC. Moreover, it would give third countries a certain right to EEC production. The Commission has answered these criticisms in the following way. The question of high budgetary cost does not arise because such agreements would be accompanied by the narrowing of prices between the EEC and its competitors. Rather than institutionalize surplus production, MSAs would lead to greater order in EEC production, since exports would be limited to those products for which supplies were assured. Finally, the existence of a safeguard clause means that domestic consumers will have the first call on all production.⁷⁷

Despite the positive role which MSAs could play, especially in the anticipated increased role for agricultural co-operation between the EEC and the Mediterranean countries, they do not provide the answer to the problems facing these latter countries. It must be doubted whether such agreements would not increase the surplus production problem of the EEC and the budgetary problems caused by the price policy of the CAP. Moreover, since an integral part of the policy is the reduction of EEC prices towards those prevailing on the markets of major competitors, it must be doubted whether the member States governments and the farmers themselves, would accept such a reduction in prices.⁷⁸ The MSA discussion emphasises the need for an EEC policy

⁷⁷ COM (81) 429, op cit n 74.

⁷⁸ Ibid, HL Select Comm on the EC: 2nd Report 1980-81 Agricultural Trade Policy, 12.

towards agricultural trade. As an answer to the problems facing Mediterranean countries, its applicability is limited. A much more wide-ranging proposal is called for.

Towards a new Mediterranean Policy

"All that the European Community has developed under the name of its global Mediterranean policy, has been a trading system; it has not tried to institutionalize its undoubted security interests in the area into a formal political sphere of influence."⁷⁹

This indictment of the global Mediterranean policy by Minet, emphasises the failure of the policy to come to terms with the objectives sought. Any new policy towards the area would have to reconcile the political aspirations of both European and Mediterranean countries, the desire to promote regional development and the need to continue, and improve, on the framework of trade relations. The following proposal for a new Mediterranean policy is an attempt to do all of this.

With respect to the Mediterranean, and some Arab countries outside this area, a three-sided approach is recommended. Firstly, the establishment of a Euro-Mediterranean/Arab Forum where political questions affecting the area would be discussed. The representatives in this Forum would be either the Heads of Government or Foreign Ministers, or both, of all Contracting Parties. The second tier of the new relationship would be the Mediterranean Development Policy, encouraging the development of the Mediterranean countries, and those members of the EEC directly involved in the area (France, Italy, Greece, Spain and Portugal). The final aspect of the new relationship would be the Mediterranean Trade Policy, which would encourage trade

⁷⁹ "Spanish and European Diplomacy at the Crossroads." in ed Minet, Siotis and Tsakaloyannis Spain, Greece and Community Politics.3.

between the Mediterranean countries and the EEC and between the Mediterranean countries themselves.

The Mediterranean Forum

This would replace, and hopefully improve on, the existing Euro-Arab Dialogue. In order to determine whether such an approach is feasible it is necessary to detail the beginnings of, and progress in, the Euro-Arab Dialogue. The effects of the oil embargo of 1973 was to force a re-appraisal of EEC policy towards the Arab nations of the Middle East. In March 1974, a threefold plan was proposed to deal with the problems posed by the Arab nations.⁸⁰ It included exploratory talks with the Arab league, leading to the establishment of a number of joint working groups and eventually a Euro-Arab conference at foreign minister level. As a result of the Luxembourg meeting of May 1976, a General Committee was established to co-ordinate the co-operation between the two sides.⁸¹

Little or no progress has been made in the dialogue for various reasons. On the EEC side, they were unwilling to contemplate the establishment of a generalized free trade agreement with these Arab nations. This reluctance arose partly out of the fact that the EEC is associated with the majority of Arab countries either through the Mediterranean Agreements or the Lomé Convention. Equally, the EEC considered the dialogue afforded it an excellent opportunity for it to discuss the oil question and hopefully attain a

⁸⁰ See Allen D "The Euro-Arab Dialogue" (1978) 16 JCMS 323; Cova op cit n 76 Part II EEC/Arab Relations after the Oil Crisis: Bielenstein ed. Europe's Future in the Arab View.

⁸¹ This body was to be the supreme co-ordinating Body of the Dialogue.

greater security of supply for this product.⁸² However, the Arab nations refused to discuss the oil question and were primarily concerned with discussing the political situation in the Middle East. This is not surprising given that several of the participants in the dialogue are directly involved in the dispute with Israel. Further Arab objectives included efforts to coerce the EEC to exert pressure on Israel and also to recognise the legitimate role of the Palestine Liberation Organization. The EEC did not succumb to this first demand but in their statements on the situation in the Middle East they have recognised the role which the PLO must play in any eventual settlement of the problems in the area.⁸³ The request by the United States to be kept informed was a major inhibiting factor in the development of the dialogue. Speaking of the net results of the Euro-Arab dialogue, Allen remarks,⁸⁴

"At the substantive level, the Euro-Arab dialogue does not appear to have advanced very far, progress to date being limited to relatively small scale development projects that are unlikely to contribute much towards the future stability and economic prosperity of either region whose growing interdependence is nevertheless an incontestable fact."

What hope then has the Euro-Mediterranean forum of making real progress? For a start, conditions have changed. The Euro-Arab dialogue began when the EEC had only 9 member States, now it has 12, all the new States are Mediterranean States. This fact, and recent events in the Mediterranean area, will accentuate the security aspect of European policy towards the area.⁸⁵

⁸² See Al-Asfahani — "Political Perspectives for the Euro-Arab Dialogue in the 1980's" in ed. Bielenstein op cit n 80.

⁸³ European Political Co-operation (3rd ed 1977), 127.

⁸⁴ Op cit n 80, 330.

⁸⁵ e.g. the civil war in Lebanon.

Moreover, it is envisaged that the Euro-Mediterranean forum will discuss all issues which are of interest to the parties, whether it is security of supply for oil or the problems of the Middle East conflict. The development of a EEC policy towards this conflict means that EEC relations in the area can no longer be restricted to economic co-operation. In the light of this "positive and sympathetic attitude",⁸⁶ it is not unreasonable to expect that the Arab position on oil could be modified, especially given the fact that the EEC already contains one oil producer.

Mediterranean Development Policy

The second aspect of the new relationship is regional development. Two different aspects exist to this. Firstly, the regional development of the non-European Mediterranean countries. Greater use could be made of the existing co-financing provision of Article 7 of Protocol 1 to most of the EEC-Mediterranean Agreements.⁸⁷ The remaining finance may come from other Arab nations, especially the oil producers. The aim of regional development will be to promote industrialization, encourage diversification and modernize agriculture. It is envisaged that such a development will take place on an intra-regional basis, for example, intra-Maghreb or intra-Mashreq. The EEC, by contributing funds, will encourage development and foster relations between neighbouring countries. The second part of the Mediterranean Development Policy will be the development of the EEC's Mediterranean region.

⁸⁶ op cit n 83,158

⁸⁷ E.g. Algerian Agreement op cit n 41.

To some extent, the Integrated Mediterranean Programmes (IMP's) represent a start in this direction.⁸⁸ In the wake of enlargement the IMP's may prove inadequate. There is a need for increased finance through the Social Fund, the Regional Fund and the Agricultural Guidance section of FEOGA. The aims of this development will correspond to those of the non-European Mediterranean Policy aspect. An overall relationship should be established between the two aspects of the development policy, in order to minimise duplication of effort and to enhance a certain level of complementarity between the regions. By far the most troublesome aspect of the new relationship will be the Mediterranean Trade Policy.

Mediterranean Trade Policy

It is envisaged that the industrial trade provisions will remain unaltered and the technical and financial co-operation provisions will only be altered to the extent necessary to take account of the Mediterranean Development Policy. It is in the agricultural area that changes will be made to the concessions already given, and to the operation of the CAP. Initially in giving concessions the EEC had to balance the demands of the European farmers for a certain level of protection against the demands of the Mediterranean countries for tangible concessions. It is obvious that the concessions were given in a way which left the balance heavily in favour of European farmers. The new trade policy will have a different balancing act to perform. The new philosophy will be to encourage the growth of complementarity and to enhance the positive aspects of competition. But how are these aims to be achieved? The solution advocated by the Commission, MSAs, has already been discussed and dismissed as inappropriate to the needs of the Mediterranean countries. Another approach may be

⁸⁸ Green Europe no197 For the Southern Regions of the Community.

product protocols, similar to the sugar agreement between the EEC and some of the signatories of the Lomé Convention.⁸⁹

This would allow the Mediterranean countries to export a certain level of produce, based on past export potentiality rather than performance, to the EEC market. The products would receive a guaranteed price. Is this not another form of tariff quota? It is not, for rather than restricting exports, it allows exports to the level of export potentiality. The implementation of such product protocols would be advanced by EEC efforts internally to discourage production which although competitive, suffers from other economic shortcomings (e.g. tomatoes under glass). Another, and perhaps a more feasible alternative would be for those countries currently having Co-operation Agreements with the EEC to convert them into free-trade agreements. This development would recognise the degree of dependence on the EEC which is shared by most of the Mediterranean countries. Any such free-trade agreements would have to include agriculture, thus enabling them to conform to the provisions of Article XXIV of the GATT. Initially, there may be restrictions on agricultural trade but such restrictions would progressively disappear. Any realistic evaluation of the possibilities for extending the agricultural concessions given to Mediterranean countries must take into account the CAP. The effect of enlargement will be to change the balance within the EEC in favour of Mediterranean producers. The North-South dichotomy in the operation of the CAP, which became evident in the Community of ten, will have to be remedied now that the Community has twelve member States. It is the nature of this reform which determines not only the future direction of the CAP but also the future of EEC-Mediterranean relations. It is essential that the introspective manner which is so evident in CAP reform should not manifest itself in this new reform. Given the Community declaration that enlargement will not take place at the

⁸⁹ See Part IV of this Paper for a detailed discussion of the Convention.

cost of third countries,⁹⁰ opportunities for an increase in the tangible benefit of agricultural concessions to the Mediterranean seems hopeful.

Even given this liberal reform, several problems will remain, most notable of these will be the EEC safeguard clause. Although this may be used in the short run period of adjustment, its use should decrease over the medium to long term. Despite the fervent hopes for greater concessions, problems exist with the approach advocated by this new Mediterranean policy. Firstly, in relation to its country coverage, five countries cause problems. The first of these is Israel. It should be obvious that this country would not be accepted into the Euro-Mediterranean Forum nor would Arab finance be too readily available to it. The problem is not really as great as imagined because, unlike other Mediterranean countries, the EEC-Israeli relationship is one of free trade rather than co-operation. Even though the final abolition of Israeli customs duties on EEC products has been delayed for another two years, this does not deflect the overall aim of the Agreement, which is to establish a free trade area.⁹¹ As such Israel could be covered by the third part of the new policy, until full free trade is attained.

Another country which causes problems is Turkey, the only Mediterranean country capable of joining the EEC. Is it capable of joining the EEC and do the EEC Turkey wish to take their relationship that far? On the question of capability, as the Commission pointed out when considering the Greek application, any applicant must respect the principles of pluralistic

⁹⁰ COM (84) 107 op cit n 67, 20.

⁹¹ OJ 1975 L 136/3. See also Wassermann "EEC-Israel Trade Agreement" (1976) 10 JWTL 92; see OJ 1984 L 332/1.

government and human rights.⁹² This view was later endorsed by all three institutions and the European Council.⁹³ Given the current political situation in Turkey, it seems unlikely that it will meet these requirements. Even if, at some future stage, they do meet these requirements does Turkey want to join and does the EEC want it? Turkey's association with the EEC is no longer taken for granted, this is in part due to concerns expressed within Turkey on the value of the agreement and its dissatisfaction not only with its provisions, and the extension of preferences to other countries. A consensus seems to have emerged that Turkey's relations with the EEC should be strengthened, so it has applied for membership of the EEC.⁹⁴

On the EEC side, concern centres on the cost of enlargement to include Turkey. In relation to the industrial sector, since it is not adequately advanced, accession to the EEC will require the application of social and regional funds to Turkey.⁹⁵ Adoption of the CAP would also cause problems, since Turkish prices for major CAP products are below those prevailing under the CAP. Accession will act as a stimulus to production thereby leading to increased surpluses. Food prices within Turkey would also rise.⁹⁶ The problem is to some extent remedied by Article 33 of the Additional Protocol on the gradual harmonisation of various

⁹² op cit n 83,194

⁹³ OJ 1977 C103/12

⁹⁴ Burrows "A Community of 13? The Question of Turkish Membership of the EEC" (1979) 17 JCMS 143 Rustow and Penrose Turkey and the Community Bahcheli "Turkey and the EC: The Strains of Association". (1980) 3 JE1 221.

⁹⁵ See "Implications of Turkish Membership for the Community." in ed Rustow and Penrose op cit n 94.

⁹⁶ Ibid, Penrose "Is Turkish membership economically feasible?"

sectors of Turkish agricultural policy with the CAP.⁹⁷ Restrictions in the form of import calendars, tariff quotas and observance of EEC reference prices still exist. It is obvious that both parties should re-assess their relationship and determine whether any alternative exists to the present situation. Weighing up the advantages and disadvantages of Turkish membership of the EEC, it is suggested that Turkey should seek its future not in Association but rather within the context of the new Mediterranean Policy. Given this development, agricultural concessions can be given to other Mediterranean countries though an application of Reg.3590/82 on the abolition of custom duties facing agricultural exports. This would effect a significant improvement in the agricultural concessions granted to other Mediterranean countries and ensure that all countries in the area are treated equally.

Two other countries which cause problems are Malta and Cyprus, because of the Agreements establishing a customs union between them and the EEC.⁹⁸ The development of the relationship between the EEC and these two countries indicate that they should also join the new policy. This could be achieved either by establishing a co-operation agreement or, if the free trade area proposal made earlier is accepted, a free trade agreement. The final country which causes problems is Yugoslavia. This is because of its different production of agricultural products and the fact that it is a Communist country. This latter factor accounts for the interest shown by the EEC in Yugoslavia. In relation to the new Mediterranean Policy one factor which encourages Yugoslavian participation is the latter's open encouragement of Balkans co-operation.⁹⁹ Such co-operation would clearly be enhanced by the

⁹⁷ Op cit n 59.

⁹⁸ OJ 1973 L 133/1 (Cyprus) OJ 1976 L 111/1 (Malta).

⁹⁹ See Artisen and Holt "Yugoslavia and the EEC in the 1970's" (1980) 18 JCMS 355.

Mediterranean Development Policy, whilst account could be taken of its different agricultural produce within the new Trade Policy. As the policy allows for separate membership in each stage, it is to be noted that Yugoslavia, if it wishes may opt out of the political relationship established through the Euro-Mediterranean Forum.

Whilst this analysis of the five countries which cause problems show that all, with the exception of Israel, could participate in at least two aspects of the new policy. Problems exist also between countries who would be natural parties to all three aspects. For example, in relation to the Mediterranean Development Policy, since political relations between Algeria and Morocco are strained over the Western Sahara question, encouragement of regional co-operation in the Western Mediterranean would be lessened as a result. Regional co-operation in this area would be further strained by the presence of Libya, a member of the Arab League. Given the political situation in Libya, it is envisaged that it would only be interested in the Euro-Mediterranean Forum aspect of the relationship. Concern also exists over the position of Lebanon, especially since due to the civil war in that country, the EEC-Lebanese agreement has been of little effect.

Final Remarks

The proposal made above seeks to establish a new type of relationship between the EEC and the countries of the Mediterranean and beyond. It recognises the political/security, regional development and economic development objectives which formed the basis of the Mediterranean policy as developed in the early 1970's. By splitting these objectives and enabling the Mediterranean countries to take part in all three, two or only one part of the new relationship to be established, the proposal also recognises the heterogeneous nature of the area.

In relation to agricultural trade, this chapter, by outlining the development of trading relations and the concessions given, emphasises the point that in relation to one of its most privileged partners the CAP has limited the value of concessions given by the EEC. The 1986 enlargement of the EEC offers it the chance to effect a change of direction by using the CAP as a positive element in external economic relations. As the Commission correctly concluded,¹⁰⁰

"The next enlargement will increase both the EEC's sensitivity and its responsibilities towards this region. It should prompt greater awareness of this and stimulate the growth of political will to deal not only with the immediate consequences, important and difficult as they are, but also with the long-term aspects, the fundamental interests of the Mediterranean countries as a whole, set against which the costs and sacrifices to be borne in the short-term can be rightly seen as very modest."

The need to establish a new policy along the lines indicated above is not a matter of political commitment, for the EEC it is a matter of political and economic necessity.

¹ The EFTA was formed by the Stockholm Convention 1960. It was a reaction by the other Western countries of Europe against the formation of the EEC.

² See Widdows, E. "The Free Trade Agreements between the COM (84) 107 op cit n 67, 23. (1973) 10 CML Rev 137.

CHAPTER 2: THE EUROPEAN ARENA.

The enlargement of the EEC by the accession of Denmark, Ireland and the United Kingdom brought about a fundamental change in EEC relations with the rest of Europe. In part this change was brought about by the actions of the EEC in reaching agreements with members of the European Free Trade Association, (EFTA) which the UK and Denmark had just left. On the other hand, external stimulus from the Soviet Union necessitated a re-appraisal of EEC policy towards Eastern Europe.

EFTA¹

Given the fact that Denmark and the UK had been members of EFTA, the EEC considered it necessary to make arrangements with these countries to ensure their continued access to these markets and to improve their access to the EEC market. But what sort of arrangement was envisaged?

Views differed within the EFTA countries on the nature of the relationship they wished to establish.² Finland, for example, anxious to maintain its neutrality and not to distance itself from Eastern Europe in general or the Soviet Union in particular, sought a purely bilateral agreement. Sweden on the other hand wanted to go as far as possible in establishing links with the EEC although full accession was ruled out. Sweden wanted a customs union arrangement and was willing to link itself with the mechanisms of the CAP and even its financial provisions. It would also participate in the development policy of the EEC. Switzerland,

¹ The EFTA was formed by the Stockholm Convention 1960. It was a reaction by the other Western countries of Europe against the formation of the EEC.

² See Wellenstein E. "The Free Trade Agreements between the enlarged EC and the EFTA Countries" (1973) 10 CML Rev 137.

however, was not prepared to adopt the CAP but sought close relations with the EEC over economic and monetary policies and industrial and technological problems. From the EEC viewpoint particular problems would have been caused had it acceded to Swedish and Swiss demands, for example, how would the decision making process operate for these "part-time members"? The EEC reaction was therefore to propose the conclusion of free trade agreements.

The Agreements

The negotiation of individual agreements with the EFTA countries was particularly useful since it allowed the EEC to vary the agreements to take account of the particular demands of the EFTA countries. However they were free-trade agreements rather than the custom-union arrangement sought by Sweden and Switzerland. The Agreements exhibit a remarkable degree of similarity both in the preambles and in the provisions. The preamble to the Agreements recognises the desire of the parties to "consolidate and extend economic relations", and to promote the "harmonious development of their trade."³ To this end the Parties resolved "to eliminate progressively the obstacles to substantially all their trade."⁴ To achieve this goal a timetable is provided for the abolition of tariffs on industrial products. What do the agreements provide for agriculture?

Agriculture being only a small part of trade between the EEC and the EFTA countries, as a result it was virtually excluded from the agreements. If agriculture was included, it would have involved a substantial degree of harmonization between the Parties. Such an

³ See Agreement between the EEC and Austria JO 1972 L 300/1; Sweden OJ 1972 L 300/1; Iceland OJ 1972 L 301/1; Norway OJ 1973 L 171/1; Finland OJ 1973 L 328/1; Switzerland JO 1972 L 303/1.

⁴ See Preamble and Article 1 of each Agreement.

intense degree of harmonization would have required the participation of the EFTA countries in the operation of the CAP. With the exception of Sweden and perhaps Austria, the remaining EFTA countries and the EEC did not wish this to happen. However, some provisions of the Agreements are relevant to agriculture. For example, Article 15 of the Austrian Agreement declares the parties,⁵

"Readiness to foster, so far as their agricultural policies allow, the harmonious development of trade in agricultural products to which the Agreement does not apply."

By virtue of Article 2 of each Agreement and Protocol 2, the only agricultural concessions given were on processed products. Article 1 of Protocol 2 provided that these products were to benefit from the elimination of customs duties and other similar charges but only to the extent that those charges represented the protection of the industrial part of the production.⁶ Charges which are specific to the parties agricultural policies do not participate in this gradual elimination.

The Agreements in GATT

The exclusion of nearly all agricultural products from the scope of the Agreements caused great concern within the GATT. It was claimed by some that the requirements of Article XXIV(8)(b), the elimination of restrictions on substantially all trade, had not been met.⁷ For although Article XXIV(8)(b) did not contain a definition of 'substantially all the trade', it was advocated that the phrase encompassed all the trade with only minor exceptions and could

⁵ Op cit n 3,

⁶ Ibid, Protocol 2 of the Austrian Agreement laid down the tariff treatment and arrangements applicable to certain goods by processing agricultural goods.

⁷ See Chapter 1 of Section 1 of Part II of this Paper; Article XXIV: The Customs Union Exception.

not possibly encompass the exclusion of an entire sector, even if trade between the parties in this sector was relatively small.⁸

Even given the limited nature of the concessions granted in the agricultural area, some members of the Working Parties considered the reduction, rather than the elimination, of duties on processed agricultural goods created new preferences.⁹ As such, this would put the Agreements in contravention of the GATT because instead of being a free trade agreement, it would be a preferential trade arrangement. Concern was also expressed over the effect these preferential tariff cuts on processed agricultural goods would have on the operation of the EEC's generalised scheme of preferences for developing countries. The views of the Parties to the Agreements conflicted with those of other members of the Working Parties.

For the Parties to the Agreements the initial and most important question was whether the Agreements satisfied the conditions laid down in Article XXIV:4. The Parties argued that the Agreements were in fact trade creating since they would tend to facilitate the development of inter-area trade and thereby achieve a closer integration of the parties economics.¹⁰ With respect to third countries, the Parties argued that the economic development resulting from the Agreement would lead to the stimulation of demand for third country products, especially, from those who benefitted from the GSP.¹¹ Due to the conflict of opinions on the Agreements, the Working Parties could not reach any unanimous conclusions as to the compatibility of the Agreements with the

⁸ A similar argument was raised in the GATT Working Party discussion of the Stockholm Convention. BISD 9th Supp 70.

⁹ E.g. EEC Agreement with Austria BISD 20th Supp 158,

¹⁰ Ibid, 146.

¹¹ E.g. EEC Agreement with Iceland BISD 20th Supp 158,

provisions of the GATT. It confined itself to merely reporting the difference of opinion expressed. Once again the principles of the GATT had been weakened and as before, the EEC's external policy had been the cause.

Agricultural Trade, Concessions or Restrictions?

By virtue of Article 15 of the Agreements, some measures have been taken to facilitate the development of agricultural trade. For example, on the entry into force of the EEC-Iceland Agreement, Protocol 6 of the Agreement laid down special provisions for imports of certain fish products into the EEC.¹² A similar fishing arrangement was reached between the EEC and Norway in 1978.¹³ However, developments in agricultural trade has not always been in the nature of concessions, more frequently they are in the form of restrictions. One of these restrictions is a Voluntary Restraint Agreement (VRA) concluded with Austria and Iceland in the sheepmeat and goatmeat sector.¹⁴ Due to the prevalence of such measures in the EEC's relations with third countries, it is worth spending some time detailing the contents of such VRA's.

The aim of these agreements, usually concluded by an exchange of letters, is to limit the exports of a particular product from a particular country to the EEC market¹⁵ paragraph 2 of the Austrian Agreement imposes a limit on the level of exports to the EEC to 300 tonnes per annum for sheep and goatmeat. This

¹² Op cit n 3,156.

¹³ Fishery products were not extensively covered in the 1973 Agreement.

¹⁴ Council Decision 81/359 OJ 1981 L 137/1.

¹⁵ For a discussion of VRA see Part II s 1 ch 2 of this Paper: Article XIX Emergency Action on Imports of Particular Products.

paragraph also obliges Austria to undertake to implement appropriate procedures to ensure that the annual quantity exported does not exceed this amount. Should these procedures not be implemented, the EEC reserves the right to suspend imports from Austria for the remainder of that year and to offset the excess quantity against Austria's entitlement for the following year. However, in the application of the safeguard mechanism of the agreement, the EEC undertakes to ensure that access to the EEC market for Austrian exports of sheep and goatmeat will not be affected by such measures.¹⁶ The EEC also undertakes to limit the levy applicable to imports to 10% ad valorem.¹⁷

To ensure a certain amount of flexibility and adaptability, the VRA's usually provide for an expansion of the quantities on the accession on new members to the EEC.¹⁸ Such expansion will take account of the existing pattern of trade between the party and the new member of the EEC.¹⁹ In order to ensure the smooth functioning of each VRA, the Parties agree to establish consultative arrangements, which may be initiated by a request by either party.²⁰ The provisions of the VRA outlined above are illustrative of similar arrangements concluded by the EEC with Argentina, Australia, Austria, Brazil, Bulgaria, Czechoslovakia, Hungary, Iceland, Indonesia, New Zealand, Poland, Romania, Thailand and Uruguay, for differing products.

It is interesting to note the lack of commitments entered into by the EEC. These are restricted to a selective application of

¹⁶ Op cit n 14, point 4 of the exchange of letters.

¹⁷ Ibid, point 5 of the exchange of letters.

¹⁸ Ibid, point 6 of the exchange of letters.

¹⁹ Idem, (No increase in quantity was given to Austria when Greece acceded to the EEC).

²⁰ Ibid, point 10 of the exchange of letters.

safeguard measures, if these are necessary, a limit on import levies and a commitment to consultation. In very limited cases only, does the EEC agree to implement its export refund system in a manner which complies with existing international obligations and its traditional share of the market.²¹ The obligations of other countries are much more onerous; limited export potentiality; an export licence systems to ensure the agreed level of exports is not exceeded and a limited capacity to alter the arrangement for their benefit.²² Indeed the renegotiation of these agreements usually involves a reduction in the level of exports. For example, the latest VRA with Austria and Iceland on trade in sheep and goatmeat has limited their exports to the sensitive EEC markets of France and Ireland to zero.²³ Despite the free trade agreement between the EEC and Austria and Iceland, these countries are still treated as 'third countries'. This relegates the importance of these agreements and frustrates the development and enhancement of their mutual economic relations. One concession in the VRA area was the Council decision of December 1984 allowing the quantities expressed in the VRA's to be improved in fresh, chilled or live quantities.²⁴

Further concessions to the EFTA countries include a concession on cheese. These reciprocal agreements were reached with Austria, Finland and Switzerland.²⁵ Each of the agreements allow for the import of cheese from these countries at a reduced levy within

²¹ Ibid, Point 8 of the exchange of letters. The interpretation of the words used shall be consistent with Article XVI GATT and in conformity with Article 10(2)(i) of the 1979 Code on Subsidies.

²² Ibid, point 9 of the exchange of letters.

²³ See Council Decision 84/309 OJ 1984 L 154/37.

²⁴ Council Decision 84/1633 OJ 1984 L 331/32.

²⁵ As an example of these agreements see OJ 1984 L 72/30 (Austria) and OJ L 18/11 (Finland).

certain annual quotas. In return a certain amount of EEC cheese will be imported into these countries.²⁶ This concession is particularly important to Austria, one of the countries most affected by the exclusion of agriculture from the scope of the free trade agreements. The range of agricultural concessions given to the EFTA countries by the Agreements is extremely limited. This range has been further restricted by EEC measures, such as VRA's and annual tariff quotas. The question should be asked; what can be done to improve agricultural trade relations with the EFTA countries and especially those countries dissatisfied with the current operation of the free trade agreements?

The Future

The free trade agreements recognised that the relationship between the EEC and EFTA could evolve. For example, Article 32 of the Austrian Agreement provides,²⁷

"Where a Contracting Party considers that it would be useful in the interest of the economies of both Contracting Parties to develop the relations established by the Agreement by extending them to fields not covered thereby, it shall submit a reasoned request to the other Contracting Party."

Each of the free trade agreements, with the exception of Finland, included this evolutionary clause. Any request made would be forwarded to the Joint Committee²⁸ for examination and hopefully the making of recommendations with a view to opening negotiations. This is one avenue available for the expansion of the Agreements.

²⁶ Ibid, point 3 of the exchange of letters.

²⁷ Op cit n 3.

²⁸ Idem, Article 29 established the Joint Committee.

through laying a variable charge on import or on export. Part II

On the occasion of the tenth anniversary of the signing of the Free Trade Agreements, the EEC's Council of Ministers reaffirmed the importance which it attached to the relationship established. Moreover, it expressed the EEC's interest in improving the functioning of the Agreement, and of extending their scope.²⁹ This positive attitude towards enlargement of the Agreements reflected work in the European Parliament and the Commission. Work which involved the enumeration of areas of potential closer co-operation. The 1983 list was more extensive than the 1978 list drawn up by the Commission, both lists included trade in agricultural products.³⁰ But how is such trade to be facilitated? One idea would be to follow the example provided by the EFTA Convention itself (Articles 21 to 25).

The original negotiators of the EFTA Convention had no desire to establish a common agricultural policy. Instead, the EFTA countries agreed to promote their mutual trade in agricultural products while continuing to operate their own agricultural policies. Articles 21 to 25 of the Stockholm Convention enables the countries to conclude bilateral arrangements in order to facilitate the growth of agricultural trade (Article 23). Annex D to the Convention lists the treatment applicable to agricultural products. The products are divided into three groups; Part I products (goods processed from agricultural raw materials), these goods are usually treated as industrial products, thereby benefiting from free-trade treatment. However, protection of the agricultural element is permissible, to the extent that the prices paid in different countries by producers may differ. Compensation under Article 21 of the Convention may be obtained

²⁹ COM (83) 326 Closer Co-operation between the Community and the EFTA Countries, 1.

³⁰ Ibid, 7. (Points 4 and 5 of the 1983 List).see Hurni "EFTA-EC Relations;Aftermath of the Luxembourg Declaration." (1986) 20 JWTL 497.

through laying a variable charge on import or on export. Part II products are generally those covered by the EEC: EFTA free trade agreement. Part III products are unprocessed agricultural products, and by virtue of Article 23 of the Convention, trade is to be facilitated by the conclusion of bilateral agricultural agreements. Tariff concessions made under Article 23 agreements apply in favour of all member States, reinforcing the multilateral nature of such agreements. An example of one of these agreements is the Finnish-Austrian Agreement of 1973, whereby Finland made concessions on Austrian wine in return for an Austrian undertaking to increase imports of eggs and pork from Finland and to facilitate the growth of imports of oats and barley.³¹

The adoption of such a framework for the conduct of agricultural trade between the EEC and the EFTA has obvious advantages for both. It will enable the EEC to effectively regulate the import of unprocessed agricultural products, whilst ensuring a place for EFTA producers in the EEC market. The extension of tariff concessions to other members of the group will facilitate the development of trade. Liberalization of this trade could be achieved by moving products from Part III through Part II to Part I and perhaps even removing them from the Annex altogether, thereby safeguarding totally free trade. Given the similarity of production in the EEC and EFTA countries any such liberalization would take place over a long term. It would allow a growth in agricultural imports from and agricultural exports to the EEC. It would also provide an example of the positive role the CAP could play in the relationship between the EEC and the EFTA countries. It would also conform to the overall philosophy of the common agricultural trade policy, by finding a place, through bilateral agreement, for EFTA agricultural exports on the EEC market. A development, such as the one outlined above would herald the

³¹ EFTA Bulletin 3/77, 6. EFTA Treatment of Agricultural Goods.

arrival of true free trade in Western Europe. But what about Eastern Europe?

B. The State Trading Countries

(Soviet Union, East Germany, Hungary, Poland, Bulgaria, Romania and Czechoslovakia)

During the 1950's, one of the political impulses to the integration of Western Europe was the relative weakness of these countries vis-a-vis the two superpowers and more especially the Soviet bloc. The first sentence of the Spaak report recognised this weakness. This report did not envisage redressing this balance by common external action but rather by increasing the economic potential of the EEC internally.³² This choice was to have an essentially negative impact on the ability of the EEC to establish relations with the countries of Eastern Europe.

The Early Period

The reaction of the Soviet Union to the integration of Europe proposed by the Rome Treaty, was to propose an economic treaty encompassing all of Europe.³³ Considering the reaction of the six to the British proposal for a Western-European free-trade area, it is not surprising that this proposal was not acceptable to the six.

The formation of the EEC was criticised on mainly ideological grounds, leaving little room for an economic appraisal of the

³² See Pinder J and P The European Community's Policy towards Eastern Europe (1975).

³³ See Pinder J "The Community and State Trading Countries." in ed. Twitchettl KJ Europe and the World: The External Relations of the Common Market (1976), 57.

effects of the group. Eastern ideologists maintained that irrespective of integration in Western Europe, the capitalist system would eventually collapse, so there was little need to establish any type of relations with this new entity. The events of the early 1960's, (the reduction of customs duties and the application by non-member States for accession) brought about a re-appraisal of the essentially negative attitude exhibited since 1957.³⁴ Complaints about the effect of integration in Western Europe from state-trading countries, especially from the Soviet Union, were referred from national capitals to Brussels, this re-emphasised the political and legal reality of the EEC. By and large, the other countries of Eastern Europe followed the Soviet line of ignoring the EEC.

However, these smaller countries were affected more by the existence of the EEC than the Soviet Union and concern about their exports of agricultural goods, forced a reconsideration of the policy of ignoring the EEC.

De facto recognition

The first manifestation of this reconsideration came when the EEC started to reach agreements with East European countries on the application of supplementary levies. These levies were imposed on agricultural imports which did not respect the reference price established for that product within the EEC. These agreements, which took the form of an exchange of letters, indicated that the EEC would not apply supplementary levies, if the countries of Eastern Europe undertook to respect the reference price. Such agreements were concluded for various products with Poland

³⁴ See Schlaim and Yannopoulos (ed) The EEC and Eastern Europe ch 2 Marsh "The Development of Relations between the EEC and the CMEA" traces the gradual change in Soviet policy towards the EEC.

(1965), Bulgaria, Hungary and Romania (1969) and Yugoslavia (1970).³⁵

These agreements tend to reflect the importance of the EEC for all State-trading countries except the Soviet Union. The current range of agreements include a VRA on the exports of sheepmeat and goatmeat from Bulgaria, Czechoslovakia, Hungary and Poland, to the EEC, especially to the sensitive markets of France and Ireland.³⁶ In the context of the GATT, an arrangement exists between the EEC and Hungary, Poland and Romania on the export of beef to the EEC.³⁷ The arrangement provides for an increase in the EEC's overall quota for frozen boneless beef from 38,500 tonnes to 50,000 tonnes. While the arrangement provides for no set quantities for export, the parties agree to exchange information on the import and export possibilities existing on the EEC and their own markets.³⁸

While these agreements tend to show that the EEC has established some form of relationship with these countries, the existence of EEC wide quotas on imports from State-trading countries constitutes an obstacle to the strengthening of these ties.³⁹ The problem of quotas and common rules for imports from State-trading countries reflects problems of an internal nature in the

³⁵ Noted Pinder op cit n 32; see Binns "The Development of a Soviet Policy Response to the EEC" 14 (1977) co-existence 240, 241.

³⁶ See OJ 1982 L 204/29 (Czechoslovakia); OJ 1981 L 150/7 (Hungary); OJ 1981 L 137/13 (Poland) and OJ 1982 L 43/13 (Bulgaria).

³⁷ See OJ L 1980 L 71/171 (Hungary); L 71/174 (Poland); L 71/172 (Romania).

³⁸ Article II of Each Agreement.

³⁹ E.g. Council Reg. 1765/82 OJ 1982 L 195/1.

EEC over the Common Commercial Policy. Despite the Paris Communiqué of 1972 which reaffirmed the member States,⁴⁰

"determination to follow a common commercial policy towards the countries of Eastern Europe with effect from 1 January 73."

No such common policy actually exists. Despite the existence of an EEC clause in member States agreements with State-trading countries, the content of these agreements did not pass to the EEC as of 1 January 1973.⁴¹ Moreover, an EEC offer to re-negotiate trade agreements with State-trading countries which were about to lapse was not accepted. The EEC, therefore, codified in one regulation all the member States contractual arrangements with these countries. Despite appearances the regulation is an amalgamation of member States liberalization and quota lists rather than a true EEC regulation of trade. This breach of the terms of Article 113(1) of the Treaty reflects not only the reluctance of member States to hand over control of commercial policy to the EEC, thereby undermining arguments about the interpretation of Art.113, but also the legacy of the position adopted in the Spaak Report.⁴²

Towards de jure recognition

Despite the inconsistencies in the application of Article 113 indicated above, some progress has been made towards de jure recognition by State-trading countries of the EEC. For example, various textile agreements have been concluded between the EEC

⁴⁰ European Political Co-operation (3rd ed) 35, 45.

⁴¹ See Wellenstein E. "The Relations of the EC with Eastern Europe" (1983) EPW 192.

⁴² *Idem*

and these countries.⁴³ Romania approached the EEC officially in 1974 asking for, and obtaining, special treatment for some of its exports which qualify for the Generalized System of Preferences. Of greater significance than this was the agreement reached in 1980 between the EEC and Romania to establish a Joint Committee.⁴⁴ The agreement, as the preamble recognises, provides a framework whereby discussions can take place on ways to ensure "the harmonious development of trade" relations between the two. The agreement envisages that the joint Committee may formulate recommendations to solve any problems that may arise. These recommendations could lead to the conclusion of agreements.⁴⁵ A later agreement between these two parties on industrial products, indicates that in most areas Romania has come to terms with the existence of the EEC.⁴⁶

Realising the importance of the EEC to the trade of other eastern European nations, the Soviet Union has adapted its policy toward the EEC. This adaptation took the form of advocating relations between the EEC and the Council for Mutual Economic Assistance (CMEA).⁴⁷ This body established in 1949 was initially limited to organizing economic, scientific and technical co-operation between its member countries and co-ordinating their national economic plans. The increasing importance of the EEC in Western Europe brought about changes in the structure of the CMEA giving it competence to conclude supra-national agreements.⁴⁸ Thus

⁴³ See Commission Reg 3019/77 OJ L 357/3.

⁴⁴ OJ 1980 L 352/1.

⁴⁵ Article 1 — the tasks of the Joint Committee.

⁴⁶ OJ 1980 L 352/5.

⁴⁷ See John I "Co-operation in Socialist Euopre: CMEA and Warsaw Pact" in ed Twitchett KJ European Co-operation Today (1980), 110.

⁴⁸ Ibid, 115.

before the CMEA actually approached the EEC it had been strengthened by its parties to enable it to act as a catalyst for integration within Eastern Europe.

The approach the CMEA made to the EEC was in part motivated by the negative reaction in Eastern Europe to the proposals made by the EEC in 1974. As previously stated, at this time, the EEC informed state-trading countries that it was ready to renegotiate agreements they had concluded with the member States. The 'scheme' for these trade agreements encompassed the following elements:⁴⁹

- long term, non preferential trade agreements;
- creation of conditions to stimulate the development of trade;
- mutual most-favoured-nation treatment; and
- examination of the possibilities of import liberalization.

The CAP was excluded as a subject for negotiations. Considering the dependence of most of the State-trading countries on exports of agricultural products it is not surprising that this 'scheme' met with an unfavourable response. Moreover, the proposal totally ignored the CMEA.

The CMEA proposal, presented in February 1976, stated in its preamble that relations were to be broadened and strengthened on both a bilateral and multilateral basis.⁵⁰ In relation to trade, Article 7 of the draft agreement after laying down the principle of non-discrimination continues,⁵¹

⁴⁹ See Heister "The EC and the East Bloc" in Lodge ed. Institutions and Policies of the EC and Baumer and Jacobsen "EC and Comecon: Intricate Negotiations between Two Integration Systems in Europe" in ed Feld Western Europe's Global Reach (1980).

⁵⁰ "Draft Proposal for an Agreement between the CMEA and the EEC on Principal Mutual Relation" in Levick and Stankovsky Industrial Co-operation between East and West (1979) Annex 3 265-268.

⁵¹ Idem.

"... they [i.e. the parties] will abolish all prohibitions or limitations in export and import of any product, if these limitations or prohibitions are not applied to all third countries, they will not impose them in the future."

Clearly, this provision was aimed at the EEC list of import quotas, established every year for products from State-trading countries. In relation to agriculture, Article 9 of the Draft Agreements provides,⁵²

"The CMEA and the EEC will promote trade in agricultural goods between the member countries of the CMEA and the member countries of the EEC. This will develop on a stable, long term, and just basis. Member countries of the CMEA and member countries of the EEC will not adopt any unilateral measures or limitations on trade in agricultural products which are not applied to all third countries."

The EEC raised many objections to the Draft Agreement. Firstly acceptance of the proposal would recognise the competence of the CMEA. This would serve to underline the role of the Soviet Union in this organization and thereby strengthen its hold over other countries within Eastern Europe.⁵³ Secondly, the CMEA could also be used to weaken the influence which the EEC could exert if it dealt with each Eastern European country on a bilateral basis. Thirdly, in relation to Article 9 of the Draft Agreement, the objections of the EEC are easy to predict. Irrespective of the fact, that the EEC market would be protected by the operation and observance of the reference price system, Article 9 would interfere with the operation of the CAP. If implemented, the EEC would be unable to take effective safeguard measures against these countries, since such measures would have to be extended

⁵² Idem.

⁵³ Luttikholt. "The Soviet Union and the EC 1957-76" (1977) 14 co-existence 79, 87.

to all countries, perhaps infringing the international commitments of the Community. The partnership priorities of the EEC, would also be disturbed by the implementation of Article 9.

Despite the fact that the EEC has little to gain from a trade agreement with the CMEA, negotiations have continued between the parties. What will be the end result of these negotiations? Given the fact that little economic gain can be expected for the EEC, it may be that negotiations will settle for merely agreeing on those elements which provide the lowest common denominator; environmental issues, exchange of technology, for example.⁵⁴ The best one can hope for in these inter-institutional negotiations is the establishment of a skeleton agreement whereby contacts will be facilitated not only between the institutions and on a member State to member State level but also on an institution to member State level. In relation to agriculture, where external competence rests with the EEC Institutions, this is the only way in which contacts and trade between the EEC and the countries of Eastern Europe will progress.

The Future

An overall assessment of the trade situation between the EEC and Eastern Europe reveals the following facts. The Soviet Union is not interested in a bilateral agreement with the EEC, since most of its exports are raw materials and so enter the EEC duty free. Moreover, the Soviet Union will wish any link between the two regions to be on the EEC to CMEA level, as this will tend to reinforce its hegemony over other East European States. Of the East European States, East Germany is not interested in concluding an agreement with the EEC, given the existence of the Protocol on

⁵⁴ Pinder J "The Community and Comecon: What could negotiations achieve?" 33 World Today 176.

German Internal Trade attached to the Treaty of Rome.⁵⁵ However, other East European States seek some sort of relationship with the EEC, especially in the agricultural sphere.

On the EEC side, there is no desire to reach an agreement with the CMEA since it will reinforce the hegemony of the Soviet Union and provide an alternative economic focus in Eastern Europe. Finally, individual agreements with the State-trading countries are favoured but these must not be at the expense of partnership priorities which are considered more important. So what does the future hold for countries such as Poland, Czechoslovakia, Hungary, Bulgaria and Romania? These countries could conclude agreements with the EEC on the basis of the Romanian agreement. However, given the limited power of the Joint Committee and the limitation of this Agreement to industrial products, this would not be a very satisfactory solution.

A more satisfactory solution would be to conclude agreements using the EEC-China Agreement as an example.⁵⁶ The preamble to this Agreement lists as one of its aims,⁵⁷

"[developing] economic relations and trade between the EEC and China on the basis of equality and mutual advantage ... and to give a new impetus to their relations"

To this end the parties agreed to grant each other mfn treatment on all aspects of their trade. The parties agreed to take all appropriate measures to facilitate the expansion and diversification of their trade. A Joint Committee is set up to assist this expansion and diversification. One provision of the

⁵⁵ This provides that in the application of the Treaty no change should be made to current trade arrangements.

⁵⁶ OJ 1978 L 123/1.

⁵⁷ Ibid, 2.

Agreement which would be of interest to the five east European countries, is Article 4(2) of the Agreement. Under this provision the EEC will endeavour to introduce measures to extend the list of liberalized imports and increase the level of quotas.⁵⁸ An agreement similar to the EEC-China agreement would fail to cover the major exports of these countries agricultural products.

Most of the five are members of the GATT, and progress could be made in this area. However as section 1 of Part II of this paper illustrated, the application of the GATT rules to agriculture is spasmodic. One must doubt whether this organization could be used to facilitate greater agricultural trade between the five and the EEC. Indeed complaints by these countries about the failure of the EEC to liberalize its import quotas vis-a-vis their products have gone unheeded. Another way forward for these five is provided in Article XXIV GATT — a free trade area. It could encompass "substantially all trade" since the EEC has little to fear from the industrial exports of these five countries. In the agricultural sphere, however, concessions would not be so all embracing, given the need to protect the domestic interests served by the CAP and the balance of concessions already granted by the EEC to other countries. Yet possibilities exist for establishing concessions which would benefit the five without impinging on any other interests. For example, using the Mediterranean experience, import calendars and tariff quotas could be established for various products such as beef, mutton and goatmeat.

However, one problem exists with this solution. Can a free trade agreement between a market economy and a centrally-planned economy lead to a free-trade area within the meaning of Article XXIV GATT? To some extent this question has been answered by the examination, within the framework of the GATT of the

⁵⁸ Ibid, Article 4(2) of the Agreement.

Finland-Czechoslovakia Free Trade Agreement.⁵⁹ Asked about the import commitments of State-trading countries, the Czech representative replied that trade was carried out on the basis of long-term bilateral trade and payment agreements.⁶⁰ These agreements include an estimate of the annual volume of trade and contain a list of essential items specified in quantities. So, as long as these bilateral agreements provide for the continuous expansion of trade, it would be possible to establish a free-trade area between differing economic systems. To some extent this is confirmed by the wording of Article 9 of the Agreement,⁶¹

"Czechoslovakia shall use the means provided by the Czech economic system which, in addition to customs duties, have a bearing on the access of Finnish goods to the Czechoslovakian market in a manner which will provide for the Finnish exports advantages corresponding to those enjoyed by the Czech exports on Finnish market as a result of the liberalization measures taken by Finland under this Agreement."

This provision envisages that there should be a degree of reciprocity between the parties, thereby ensuring compliance with the provisions of Article XXIV GATT. What about agricultural products? Protocol No.1 lays down the treatment applicable to agricultural goods.⁶²

Besides specific concessions, Article 1 enjoins the parties to foster the harmonious development of agricultural trade, within the framework of their national agricultural policies. The objective is to ensure that trade develops in a manner satisfactory to the parties. Problems of agricultural trade are subject to the

⁵⁹ BISD 23rd Supp 67.

⁶⁰ Ibid, 69.

⁶¹ The text of the Agreement can be found in (1977) 11 JWTL 479.

⁶² Idem.

consultation procedures provided in the main Agreement.⁶³ If an agreement similar to the Czech-Finnish Agreement was reached with the interested East European States it could provide for the balanced expansion of trade, especially in agricultural products. It would provide a guaranteed export market for both parties to the Agreement and establish a framework in which economic (and development) relations could be fostered.

Recognising that various factors militate against the formulation of an EEC-CMEA link, various proposals have been made in this part to make progress in the relationship the EEC has with various East European countries.

1. — An extension of the EEC-Romania agreement to Bulgaria, Czechoslovakia, Hungary and Poland;
2. — The signing, by these countries of an agreement similar to the EC-China Agreement;
3. — The conclusion a free trade agreement between the EEC and these countries based on the Finland-Czechoslovakia Free Trade Agreement.

This last suggestion offers a balanced way forward in the EEC's relations with Eastern Europe. Of course, the EEC could always unilaterally abandon its quota restrictions on imports of State-trading countries. However, given the failure of the EEC to establish a Common Commercial Policy vis-a-vis these countries by 1 January 1973, such a unilateral concession appears unlikely. Moreover, option 3 accords with the philosophy of the common agricultural trade policy (reluctant liberalism) and demonstrates how the CAP can be used as a positive implement in the external relations of the EEC. Inserting Eastern Europe rather than CMEA in

⁶³ Article 15 of the Agreement establishes a Joint Commission responsible for the administration of the Agreement and the review of its implementation. By virtue of Article 16 the Joint Commission shall function by mutual agreement.

the following conclusion by Marsh, suggests that the future course of the relationship will be determined by the EEC.⁶⁴

"The future prospects of EEC-CMEA relations will be conditioned by the developing outline of EEC foreign economic policy and the motives underlying it. It is hoped that those motives do not stem from considerations of mere short term economic and political gain but are a product of a genuine desire to contribute to a lasting East-West economic and political détente At the moment the EEC holds the key to nature of this relationship, it remains to be seen whether or not it will use its power in this area constructively."

An overview

The examination of the EEC relationship with the countries of Eastern Europe and the EFTA illustrates the negative impact the CAP has had on the external economic policy of this relationship. Although able to face industrial product competition from the EFTA countries and a carefully controlled competition from Eastern Europe, no such open-ended approach is apparent in agricultural trade. Perhaps, the similarity of production between these countries militates against an effective agricultural relationship. However, given the need for the EEC to formulate a true agricultural trade policy, some changes will have to be made to the EEC relations with the rest of Europe. Proposals have been made with respect to the EEC's agricultural trade relations with these countries. In the absence of a political commitment relations with the rest of Europe will remain in the form outlined above since the economic incentive to enter a new era is not a powerful motivating factor for the EEC. However, the EEC should not disregard the opportunities presented to it, not only to encourage free trade within Europe but also to establish a lasting

⁶⁴ Op cit n 34, 38.

and stable peace between East and West. The CAP should not determine the nature of the relationship which the EEC has with the rest of Europe rather this relationship should determine how the CAP operates within Europe.

establish relations with all countries, especially with those as developed as it is. As the statement of the conference of the Heads of State and Government of the member States of the Community, meeting in Paris, in 1972 declared,¹

"With regard to the industrial countries, the EEC is determined, in order to ensure the harmonious development of world trade:

— to maintain a constructive dialogue with the United States, Japan, Canada and its other industrialized trade partners in a forthcoming spirit, using the most appropriate measures."

What are these appropriate measures? Has the EEC shown a forthcoming spirit? And more importantly, have relations between the EEC and these countries contributed to the harmonious development of world trade? The following account of the EEC's relations with such countries as Australia, Canada, Japan, New Zealand and the United States will provide the answers to these questions.

Australia

Australia was one of the three developed Commonwealth countries affected by the 1973 enlargement. Unlike New Zealand for whom special arrangements were made in the Treaty of Accession, or Canada who subsequently concluded a co-operation

¹ European Political Co-operation (3rd ed, 1977) 35, 45.

CHAPTER 3: THE DEVELOPED COUNTRY RELATIONS, "THE UNASSOCIABLES".

To have a truly international personality the EEC must be able to establish relations with all countries, especially with those as developed as it is. As the statement of the conference of the Heads of State and Government of the member States of the Community, meeting in Paris, in 1972 declared,¹

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¹ European Political Co-operation (3rd ed, 1977) 35, 45.

EEC links with Australia are fostered through ministerial consultations.² How did enlargement affect Australia?

The most significant change in Australian trade over the past decade has been the declining importance of agricultural exports. It is not surprising that the CAP has been a target of criticism. Criticisms which seem justified on examination of the trade relations in agricultural products between the EEC and Australia. Between 1974 and 1977, Australia was one of those countries severely affected by the special safeguard measures taken by the EEC to limit imports of beef. A continuing role for Australia in the EEC beef market was to some extent guaranteed by EEC concessions in the Tokyo Round of multilateral trade negotiations. Of the global quota of 20,000 tonnes of fresh, chilled or frozen bovine meat, Australia has a quota of 5000 tonnes.³ While this is a valuable concession, Australian complaints do not end here. On enlargement, Australia managed to diversify its markets for beef exports, especially to the Middle and Far East. The fourth round of ministerial consultations in June 1985 brought about a commitment from the EEC not to grant export refunds for European beef exports to the Far East.⁴ In the light of this assurance Australia dropped a complaint which it had made to GATT on the EEC export refund system for beef. However, in September 1985, the export refund system was reinstituted for ten designated countries in the Pacific. While recognising that these ten are countries where beef consumption is low, this action provoked criticism from Australia. New measures to reduce the EEC surplus of beef, through reducing the price at which surplus beef is sold to merchants for exports outside the EEC, have also

² See Miller "The EC and Australia" in ed Lodge Institutions and Policies of the EC and Miller "The Unassociables" The EEC and developed countries overseas" 30 World Today 327.

³ OJ 1980 L 71/160.

⁴ EC News No.5 1985, 1.

been criticised for threatening Australian markets in both the Middle East and Far East. The debate continues.⁵

Restrictions have been placed on the export of sheepmeat and goatmeat from Australia. The quantity is set at 17,500 tonnes per annum, a significant reduction in traditional Australian exports to the EEC.⁶ Further restrictions are also placed on traditional Australian exports of cheese, these being limited to annual quotas of 2,500 tonnes of cheddar cheese and 500t of processed cheese.⁷ However, the greatest source of criticism of the CAP relates to the common organization of the market in sugar. Until 1975 Australia was the main beneficiary of the Commonwealth Sugar Agreement. The demise of this Agreement and the negotiation of Protocol 3 of the Lomé Convention, on exports of sugar to the EEC, ended this trade in sugar. Australia was forced to find alternative markets for its sugar exports. This process was not helped by the failure of the 1977 ISA or the growth of EEC sugar exports through the export refund system. As previously noted, Australia was one of the countries who complained to the GATT about the EEC's export refund system for sugar. A complaint which did not yield a very satisfactory result for Australia.

EEC-Australia dialogue has been carried out within the multilateral framework of the GATT and OECD and on a bilateral basis through ministerial consultations between the Commission and Australia. The relationship in the 1970's and early 1980's was characterised by 'acrimonious debate' over the effects of the CAP. The recent Labour Government, led by Mr Hawke, has ushered in a new phase in the relationship whereby Australia hopes to achieve its aims by consultation rather than

⁵ EC News No.4 1986, 1.

⁶ OJ 1980 L 275/13, 20.

⁷ OJ 1980 L 71/164.

confrontation.⁸ It remains to be seen whether this change of approach by Australia will yield any significant concessions from the EEC in the agricultural area.

Canada

Canada, another of the Commonwealth countries affected by the 1973 enlargement was not as severely affected as either Australia or New Zealand. The nature of its trade is heavily reliant on the United States market. This over-concentration motivated Canadian policy makers to find ways to deepen and diversify their external relations. In order to achieve this better balance in their external economic relations, the Canadians sought to establish relations with the EEC. The end result of the pursuit of this '3rd Option' was the conclusion in 1976 of a Framework Agreement for Commercial and Economic Co-operation between the two parties.⁹

The Agreement recognises the Canadian desire to establish a direct link with the EEC and its member States. And in a phrase which is echoed in other EEC agreements, the parties resolved to "consolidate, deepen and diversify their commercial and economic relations".¹⁰ Article 1 of the Agreement states that each party grants the other most-favoured-nation treatment,¹¹ a strange provision considering that the parties are already under this obligation as a result of their adherence to the GATT. The remainder of the Agreement is limited to means of encouraging commercial and economic co-operation and to this end a joint

⁸ BISD 26th Supp 290.

⁹ EC News No.4 and 10, 1986.

¹⁰ OJ 1976 L 260/36. See Lasok D "Involvement with the EEC: Some Canadian Considerations" (1976) 22 McGill LJ 574.

¹¹ Ibid, 36.

Committee has been established.¹² The nature of the Agreement is non-committal. However, it does provide an avenue through which EEC-Canadian relations can be fostered and developed, especially since in the field of economic co-operation no matter is excluded.

Agricultural relations between the EEC and Canada have centred on Canadian claims for compensation arising out of the enlargements of the EEC and the negotiation of an agreement for cheese. An agreement was reached within the context of GATT enabling Canada to export cheese to the EEC.¹³ The EEC, according to the Agreement, undertakes to import an annual quantity of 2,750 tonnes of aged cheddar. Canadian obligations under the agreement include an obligation to respect the minimum prices prevailing on the EEC market.¹⁴ Like the cheese agreement reached with Australia, the Agreement includes a safeguard clause which enables the EEC to make adjustments to the quota, in consultation with Canada, should difficulties arise on the EEC market.¹⁵ The Agreement fails to compensate Canada for the effects of the 1973 enlargement. Since the concession on cheese is reciprocal, it has been pointed out that whilst Canada must respect the minimum price on the EEC market, there is nothing to stop the EEC from selling below these prices on the Canadian market.¹⁶

Relations with Canada in the agricultural area encounter the stumbling block which also affects Australia's relations with the Community, the CAP. It is the competitiveness of these nations'

¹² Idem.

¹³ Article IV of the Agreement establishes the Joint Co-operation Committee.

¹⁴ OJ 1980 L 71/129.

¹⁵ Point I of the Agreement.

¹⁶ Point I, 2.

agriculture which obstructs a more wide ranging relationship in the agricultural area. Canada has turned away from the EEC since 1976, perhaps, in recognition of the futility of the "Third Option" and the inevitable nature of its dependence on the United States as an export market for its products. Ministerial discussions between the EEC and Canada have tended to focus on the wider issues of the multilateral trade system and, the EEC's import ban on seal products which adversely affects Canadian interests.¹⁷

Japan

EEC relations with Japan suffer from the inadequacies which characterise the EEC's relations with the CMEA; a lack of agreement between the member States and the Community institutions on the proper interpretation of Article 113.¹⁸ Ministerial discussions centred on the rising tide of Japanese exports to the Community, especially in the high technology area.¹⁹ To counter this deterioration in the trade balance, the EEC efforts in these consultations concentrate on persuading the Japanese to open up its domestic market, to allow for an increase in EEC industrial exports. Agricultural issues are rarely discussed.

¹⁷ EC News No.2 1986, 1.

¹⁷ Cohn "Canada and the EEC's CAP. The issue of trade in Cheese." (1978) 1 JEI 125. Point I, 3 of the Agreement envisages discussions between the parties only if Canadian prices cause serious difficulties on the Community's cheese market.

¹⁸ EC News 1985 No.6, 4.

¹⁹ See Chapter 2 of this Part. Appendix 1 Canal 5179 (1973).

New Zealand

The most adversely affected commonwealth country as a result of the 1973 enlargement was New Zealand.²⁰ Earlier accession applications by the United Kingdom brought about a realization within New Zealand that efforts would have to be made to ensure the continued accessibility of its exports to the United Kingdom market.²¹ Intense political negotiations by various New Zealand governments and by the British government on behalf of New Zealand brought forth a solution to the problems which would face this country in the event of British accession to the EEC. This solution for two of New Zealand's most vital exports was enshrined in Protocol 18 of the 1972 Act of Accession. This provided for continued New Zealand exports of cheese and butter to the UK market.²²

Protocol 18 authorised New Zealand exports of cheese to the United Kingdom market from 1973 to 1977, although the quantities declined as each year passed. Article 5(3) of the Protocol precluded the extension of this arrangement beyond December 31 1977.²³ Anxious to continue its export of cheese to the UK market, the New Zealand government pressed for the extension of the arrangement after this date. Such an extension was not contemplated by the EEC. A solution to the problem was found in the context of the Tokyo Round of Multilateral Trade Negotiations whereby New Zealand was given an annual quota of 9000 tonnes (6500 tonnes cheddar and 2,500 tonnes processed

²⁰ EC News No.2 1986, 1.

²¹ See Lodge J The European Community and New Zealand.

²² See McCluskie R The Great Debate (1986) for a discussion of the dialogue between NZ and the UK during the 1963 negotiations on UK entry to the EEC.

²³ EEC Treaty of Accession Appendix 1 Cmnd 5179 (1973).

cheese).²⁴ This arrangement is similar to that reached with Australia. Imports are allowed provided they conform to the minimum price requirements of the EEC market. However, given the fact that in 1973 New Zealand actually delivered 100,000 tonnes to the UK market, this concession imposes a considerable burden on New Zealand.²⁵ Attempts to diversify have been thwarted by the presence of the EEC export refund system in the international cheese market.

In relation to butter, Protocol 18 was much more generous. It allowed for substantial quantities of New Zealand butter to be exported to the UK market. However, several problems have arisen with its provisions. For example, the pricing formula envisaged that New Zealand would receive a price representing the average of prices over the years 1969 to 1972.²⁶ The effects of inflation and the application of monetary compensatory amounts soon made it uneconomic for New Zealand to export to the UK market. Perhaps, this was one of the reasons why the New Zealand quota for 1973 and 1974 was not fully filled. New Zealand complaints about the pricing system were resolved at the Conference of EEC Heads of Government in 1975. The Dublin Declaration stipulated that the EEC,²⁷

"... which remains attached to the fair implementation of the Protocol is ready to review periodically and as necessary to adjust the prices having regard to the supply and demand developments in the major producing and consuming countries of the world and also to the level and evolution of prices in the Community"

²⁴ Idem.

²⁵ OJ 1980 L 71/149.

²⁶ Actual deliveries of NZ cheese to the UK in 1976 and 1977 exceeded the quotas established.

²⁷ Op cit n 23.

The cost to New Zealand of this concession on the pricing formula was a recognition by New Zealand of the principle of degressivity of supply. This was a serious blow to New Zealand hopes, since for negotiating reasons, it was essential that New Zealand should resist any attempts to phase out what it regarded as a permanent arrangement.²⁸ It is not surprising that the quantities allowed to be exported should decrease, given the impression created in EEC circles that New Zealand was not making the most of the opportunities provided by the Protocol.

This concept of degressivity was applied when the butter concession was re-negotiated at the end of 1977. Article 5(2) of the Protocol envisaged the negotiation of,²⁹

"Appropriate measures to ensure the maintenance after December 31, 1977 of exceptional arrangements in respect of imports of butter from New Zealand."

When these "exceptional arrangements" were reviewed towards the end of 1977, it was noted that the situation not only in the UK market but also the EEC market had changed. On the former, production of butter had increased significantly whilst, on the latter, problems of surplus production had led to the introduction of a "co-responsibility levy" to deter excess production. Previous regulations governing the import of New Zealand had limited the New Zealand share of the U.K. market for direct consumption of butter to 25% and charging a special levy on all other uses.³⁰ It had proved difficult to implement this system.

²⁸ New Zealand and the EEC: Basic Facts (1979), 41. See also Green Europe No.171 EEC Imports. The NZ File and Annex 1 to COM (83) 616.

²⁹ Lodge J "New Zealand and the European Community." Yearbook of World Affairs 1981, 208, 209 et seq.

³⁰ Op cit n 23.

on the functioning of Protocol 18 and subsequent regulations

The 1977 review concluded with the application of the principle of degressivity to New Zealand butter exports, setting the 1978 quota at 125,000 tonnes declining to 115,000 tonnes in 1980.³¹ New Zealand had lost its arguments for a permanent, fixed arrangement. Further reviews of these "exceptional arrangements" have led to further deductions in the level of exports from 94,000 tonnes in 1981 to 79,000 tonnes in 1986.³² During the visit of the EEC's Commissioner for Agriculture to New Zealand in September 1985, the promise was made that,³³

"In its considerations the Commission will, as in earlier years, use its full powers to ensure that an appropriate balance be struck between the diverse interests of all parties concerned."

A possible explanation for the political and economic relationship between New Zealand and the EEC is that New Zealand is heavily dependent on the EEC market. From the EEC's point of view, the increasing surplus of milk and milk products is a major cause of concern. Although a modification to the International Dairy Agreement in June 1985 enabled the EEC to dispose of some surplus stock, this accomplished a reduction in, rather than the elimination of stocks. The attitudes of some member States is against any continuation of the "privileged position" enjoyed by New Zealand on the EEC butter market.³⁴ As a Commission report

³¹ Reg. 1655/76 OJ 1976 L 185/1. Article 3. This particular regulation has been amended frequently to extend the import arrangement. Reg. 2007/84 OJ 1984 L 187/7 on its amendment of Reg. 3667/83 stated that before August 1 1985 the Council should unanimously decide on the maintenance of the exceptional arrangement from January 1 1989.

³² EC News 1986 no 8,1.

³³ Address to the New Zealand Institute of International Affairs (Wellington September 3 1985), 10.

³⁴ Lodge op cit n 29, 214.

on the functioning of Protocol 18 and subsequent regulations noted, New Zealand exports constitute less than 4% of total EEC production.³⁵ The report quite correctly points out that stopping imports would "not solve the Community's milk problem nor relieve the Community of its responsibility to restore balance". The report concludes,³⁶

"Any major and abrupt drop in the quantities to be exported by New Zealand to the UK would have serious consequences for that country's economy which would adversely affect the political and economic relationship between New Zealand and the Community."

A political commitment seems likely to be made allowing for the continued export of New Zealand butter to the UK market, perhaps around the 70,000 tonnes per annum figure.³⁷ The grounds for the conclusion rest on the more overt political dimension to the relationship between the EEC and New Zealand. Both are interested in the development and stability of the South Pacific region.

Problems have arisen in other areas of agricultural trade, exports of apples from New Zealand are subject to a voluntary restraint agreement, as are exports of mutton, lamb and goatmeat, even though the latter is not particularly restrictive.³⁸ The level of dependence on continued access to the Community market for New Zealand products indicates the importance which it attaches to a constructive relationship with the EEC. The broadening of the relationship, through the consultative committee arrangement,

³⁵ COM (83) 616 Report on the functioning of the arrangements relating to the import of NZ butter into the UK market on special terms, 7.

³⁶ Ibid 10.

³⁷ Comment by Andreissen op cit n 33.

³⁸ OJ 1980 L 275/28.

indicates the importance which the EEC attaches to having one friendly ally in the South Pacific region and its desire to create "a more active partnership across the board."³⁹

The United States

Initially a supporter of move towards European integration, the United States soon became concerned about the operation of the then "fledgling" CAP. This concern manifested itself in what has become known as the 'Chicken War'.⁴⁰

This "war" arose from the following development of the CAP. Regulation 22 laid down measures for the gradual establishment of a common organization of the market in poultry meat.⁴¹ In order to keep West German production competitive against imports a special compensatory payment was levied in the nature of an import duty. A drop in the level of American poultry exports to West Germany led to demands from the United States for a modification of the pricing arrangements laid down in Reg. 22. The American administration using the "unsatisfied" negotiating rights which it claimed under Article XXIV:6 GATT sought to open negotiations.⁴² Irrespective of the merits of the claim, it was doubted whether the United States fulfilled the conditions under

³⁹ Address to the NZIIA in Christchurch reported EC News No.5 1986, 3. A similar conclusion is reached by Lodge op cit n 29, 220.

⁴⁰ See Daleiden "Agricultural Policy and the Import of Poultry Meat from the United States." (1963) 1 CML Rev 339. Walker "Dispute Settlement The Chicken War." (1964) 58 AJIL 671.

⁴¹ Walker op cit n 41, 673-77.

⁴² Ibid, 682. See also Ames and Turner "US Poultry Exports Challenging EC and Brazilian Poultry Subsidies." (1986) 1 FILJ 109.

Article XXVIII GATT.⁴³ The main interest in the dispute was the attempt by the United States to influence the development of the CAP. The end result of the dispute was the promise by the Community that,⁴⁴

"until the putting into operation of the CAP for corn, Sorghum, rice, ordinary wheat and poultry, the member States undertake not to modify their national import systems in such a way as to make them more restrictive."

However, this did not preclude the common organization of the markets for these products from being restrictive whenever the national import systems were replaced by a common import system.

American efforts to influence the CAP continued during the Kennedy Round of multilateral trade negotiations. However, as already noted, the Kennedy Round was a failure insofar as discussion of agricultural trade was concerned.⁴⁵ Increasingly, the CAP became the major bone of contention between the parties. This was because of the relative decline in traditional agricultural exports from the United States to the EEC, and because the Community had started to compete with the United States on the world markets. The fact that such exports were facilitated by the EEC's export refund system, fuelled the criticisms levelled against the CAP by the United States.

In the late 1960's criticism of the CAP was directed against the preferential trade agreements concluded by the EEC with Spain

⁴³ See discussion of this dispute Part II s 1 ch 2: Article XXVIII: Modification of Tariff Schedules.

⁴⁴ EC Bull Supp 4/62, 69-70. See also Harris S EEC Trade Relations with the USA in Agricultural Products. (1977).

⁴⁵ See Part II s1 ch3 GATT attempts to influence domestic agricultural policy.

and Israel. The United States complained that these agreements would cause trade diversion in favour of the preferred countries. A request by the EEC for a waiver from its obligations under Article I GATT, in order to reduce the customs duties facing citrus fruits originating in Spain and Israel, was severely criticised.⁴⁶ Most members of the Working Party, established to consider the request, thought that such preferences were not necessary, given the efficient nature of production in these two countries.⁴⁷ Most members of the Working Party in fact doubted whether such preferences were in conformity with the basic GATT principle of non-discrimination.⁴⁸ Unable to prepare a draft text of the waiver, the Working Party reached no agreed conclusion. Disregarding the divergence of opinion within the Working Party, the EEC concluded preferential trade agreements with Spain and Israel, which provided for tariff concessions on the exports of citrus fruit.

Angered by this infringement of the GATT, the United States lodged a complaint against the Agreements on the grounds that they violated the mfn principle of Article I GATT and the value of tariff concessions under Article II GATT. This situation was remedied by the Casey/Soames Agreement of 1973. In return for the US dropping the complaint against the agreements, the EEC undertook not to expand its agreements with the countries of the Mediterranean.⁴⁹ The expansion of these agreements through the Global Mediterranean Policy jeopardises the Casey/Soames Agreement. Do the preferences granted by the EEC to Mediterranean countries affect the United States in any major

⁴⁶ BISD 17 Supp 61.

⁴⁷ Ibid, 65.

⁴⁸ Ibid, 67.

⁴⁹ Gaines, Sawyer and Sprinkle "EEC Mediterranean Policy and US Trade in Citrus," (1981) 15 JWTL 431, 431-434.

way? A study has noted three potential effects of the Mediterranean Agreements concluded by the EEC on US trade in citrus. They are,⁵⁰

- "(1) US exports to the EEC should decline due to the displacement by Mediterranean suppliers;
- (2) US exports to third countries should decline due to the increased competition from either displaced non-preferred suppliers; and finally
- (3) US imports should increase as other non-preferred suppliers seek markets for their displaced production."

The study concludes that trade diversion in favour of the Mediterranean countries has in fact occurred.⁵¹ US complaints have eased due to negotiated tariff reductions for citrus fruits for non-preferred countries in their peak growing system. It seems likely that this arrangement will be nullified by the enlargement of the EEC, given the high level of Spanish production, and the fact that this production will cease to attract customs duties. The complaints of the United States made in the early 70's could well reappear in the late 80's.

The Tokyo Round of trade negotiations constituted another opportunity for the United States to criticise the CAP, whilst looking for some concessions from the EEC. However, the fact that the CAP had escaped the Kennedy Round intact and had matured in the intervening period limited the possibilities for concessions. The Tokyo Round was as much of a failure vis-a-vis agricultural trade as was the Kennedy Round. Disputes between the EEC and the US about the framework of negotiations, and a new international grains agreement and the new code on subsidies militated against any substantial progress. Some concessions were obtained by the United States, for example, an exchange of letters

⁵⁰ Ibid, 438-439.

⁵¹ Ibid, 439.

concerning the poultry sector, reduced the threshold prices and levies on certain poultry parts.⁵² An exchange of letters also led to the reduction in the threshold price for round grain rice⁵³ and a tariff quota of 10,000 tonnes was established for high quality beef.⁵⁴ Such concessions only tamper with the CAP rather than bring about a fundamental re-evaluation of its provisions.

As the relationship between these two parties moved into the 1980's, the United States adopted a much more strident approach to the CAP. For example, American reaction to a new common organization of the market in sugar was to enact a new Sugar Act which effectively prohibited EEC access to the American market.⁵⁵ The rationale behind the legislation stems from the export-subsidy system used by the EEC. This system has been at the centre of two American complaints to the GATT over EEC exports of wheat flour and pasta.⁵⁶ The Reagan Administration currently has a catalogue of complaints on the operation of the CAP which, in addition to the complaints on export subsidies, mentioned above, include,⁵⁷

- "(i) high import levies which shield the EEC from world markets and makes US exports to it more costly;

⁵² OJ 1980 L 71/138.

⁵³ *Idem*.

⁵⁴ OJ 1980 L 71/139.

⁵⁵ See Terlinden *European Sugar Policy* (1985) and Tsadik "International Sugar Market: Self-Sufficiency or Free Trade." (1982) 16 JWTL 133.

⁵⁶ BISD 29th Supp 46, 47. See also Coccia "Settlement of Disputes in GATT under the Subsidies Code: Two Panel Reports on EEC Export Subsidies." 16 Ga J Int'l & Comp L 1 (1986) and "Just Friends." Proceedings of the 77th Annual Meeting of the American Society of International Law.

⁵⁷ Ginsberg "The EC and the USA" in ed Lodge *Institutions and Policies of the EC*, see Friedman L *The Troubled Alliance: Atlantic Relations in the 1980's* (1983).

- (ii) high-price support levels on open ended production leading to surpluses that are often subsidized for export;
- (iii) Mediterranean tariff preferences for citrus products;
- (iv) the recommendation for a levy on imports of oils and fats, to pay for the accession of Spain; and finally,
- (v) the proposed levy on cereals substitutes."

How is this relationship between the EEC and the United States to advance? Various possible avenues of compromise have been suggested⁵⁸ including; an agreement to disagree over the trade effects of domestic agricultural policy; movement on the United States position against Commodity Agreements thereby satisfying EEC demands for more stable international markets; movement on the EEC side through a reduction in the level of export subsidies; marketing sharing arrangements; and finally a standstill agreement. Recalling that any agreement will have to satisfy the objectives sought to be realised by each parties domestic agricultural policies and noting the divergences of these objectives one must seriously doubt whether any agreement is possible given past disagreements between the EEC and US. Perhaps, the best that can be hoped for is an improvement in the consultation procedure. As Lamb notes,⁵⁹

"We export many of the same products as the EEC, but without government subsidies. When subsidised EC products threaten to knock US out of traditional markets or prevent US from getting a toehold in new ones, there is bound to be conflict. It is tempting to threaten to outsubsidise the competition and indeed, until the early seventies we did subsidise farm exports — but it is less costly and certainly safer from

⁵⁸ Harris op cit n 45.

⁵⁹ Lamb "Issues in US-European Community Relation: in UACES The United States and the European Community." New Administration and Continuing Problems, (1981) 1, 5.

an economic point of view to try to manage each problem as it arises or, ideally, before it arises."

An overall appraisal

An answer can now be given to the questions asked at the beginning of this chapter. As to the appropriate measures, it is obvious that this is by the establishment of ministerial consultation arrangements. The forms of partnership chosen by the EEC to deal with the countries of the Mediterranean and of EFTA, have been deemed inappropriate for these five developed countries. Perhaps, it is because these types of agreements are designed to complement the trade of the partners with that of the Community. Given the nature of competition between these five nations and the EEC, free trade or co-operation agreements are clearly inappropriate.

As for the forthcoming spirit and the harmonious development of world trade, the answers to these questions clearly show that neither is accurate. The EEC's reaction to these five, with the exception of Japan and perhaps New Zealand, underlines the basic assumption of the CAP. Internal production will provide most of the food required by the EEC, where imports are required they will be for products either not produced in the EEC in sufficient quantities or at all. Because these countries are producers of temperate-zone products which directly competes with internal production, access for them is limited. As such, it could hardly be said that the EEC has contributed to the harmonious development of world trade in agricultural products. Equally, these countries have not significantly contributed to the harmonious development of world trade. The situation on the world markets is neither the fault nor responsibility of the EEC.

What solution can be found to this problem? Is a solution desired? It is obvious that the GATT could not be used as a forum for

finding a solution, given the ineffectiveness of this organization in so far as agricultural trade is concerned. Perhaps the more limited organization, the OECD, could provide a framework for further consultations searching for a solution. The crux of the problem is not which organization is chosen or which method is opted for but rather the lack of desire on the part of the EEC for a solution to be found. Any solution would tamper with the intricate balance established by the CAP. It must be assumed that since the EEC has put minimal effort in establishing relations with these five developed nations, that it is happy with the outcome. If it were not, it would strive to improve these relations. With the exception of Japan, it was these countries which wanted to associate in a constructive fashion with the EEC rather than vice versa. Given this situation, relations between the five and the EEC will develop in areas outside agriculture. For example, the Committee on Raw Materials between the EEC and Australia and the consultative committee with New Zealand aiding co-operation with South Pacific countries. It is to be regretted that the EEC has chosen this minimalist option. It downgrades the role these countries and the EEC could play in the revitalization of world trade with respect to agriculture and in the development of the developing countries. In light of this, the following statement of the Foreign Ministers of the EEC on the European Identity appears empty of real meaning,⁶⁰

"The Community, the world's largest trading group could not be a closed economic entity. It has close links with the rest of the world as regards its supplies and market outlets. For this reason the Community, while remaining in control of its own trading policies, intends to exert a positive influence on world economic relations with a view to the greater well-being of all."

⁶⁰ Copenhagen Declaration, December 1973, point I, 7. European Political Co-operation (3rd ed 1978), 69, 71.

It could be asked, whether the EEC is in control of the CAP or is the CAP in control of the EEC? This discussion of EEC relations with developed countries tends to show that the latter rather than the former is the case.

The European Community's approach to developing country relations illustrates a conflict between the member States over the orientation of the EEC's development policy. Whereas some member States favour a regionalist approach, concentrating on Africa, other member States press for a globalist approach, which would treat all developing countries equally.¹ The conflict between these differing approaches is obvious when on examination of EEC's relations with Latin American and Asian countries.

Latin America

At the end of the 1970's the Economic Commission for Latin America noted,²

"The market of the European Community is at present the most important for Latin America after that of the United States. In addition, exports to the EC have increased more rapidly than those to the United States. Thus the European Community has played the most important role in balancing and diversifying Latin America's trade relations. For its part, Latin America is one of the most important regions, as regards both the volume and composition of its purchases."

Was the reason for this situation the relationship established by the EEC with the countries of Latin America?

¹ For further discussion of this point see Part IV of this Paper.

² Cited in Mowbray AG, The EC and Latin America: A Case Study in Global Role Expansion.

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The first step in the relationship was made by a Council decision of December 1970 which agreed to the establishment of a permanent co-operation mechanism.³ The decision suggested meetings at ambassadorial level between the EEC and the countries of Latin America. This permanent dialogue provided no tangible improvement in the relations between these two regions. Perhaps, the heterogeneity of Latin America, characterised by the presence of newly industrialized countries, developing countries and even least developed countries, militated against one overall approach. To counter this heterogeneity, the EEC opted for a series of bilateral agreements with some of the more advanced countries of the region. This bilateral approach was to some extent anticipated by the countries of the region in the 1970 Buenos Aires Declaration.

The Agreements

The aims of the Agreements concluded between 1973 and 1975 between the EEC and Uruguay, Argentina, Brazil and Mexico were inspired by the parties determination to,⁴

"Strengthen, deepen and diversify [trade] relations for their mutual benefit."

Each of the Agreements granted the parties most favoured nation treatment, not only on customs duties but also on all charges of any kind on imports and exports.⁵ Concessions in the agricultural area were made to Brazil, Uruguay and Argentina. For example in

³ Muniz "EEC-Latin America: a relationship to be defined" (1980) 19 JCMS 55.

⁴ *Ibid.*, Article 4 of the Agreement.

⁴ OJ 1973 L 333/1 (Uruguay); OJ Sp Ed 1971, (Argentina); OJ 1974 L 102/23, (Brazil); OJ 1975 L 247/1 (Mexico). [See also OJ 1982 L 281/1: Framework Agreement for Co-operation between the EEC and Brazil.]

¹⁰ COM (84) 105 Guidelines for the strengthening of relations

⁵ Article 2 of the Agreements.

relation to Brazil, Annex I of the Agreement implemented a EEC concession on beef.⁶ This concession stated that when implementing the market organization in beef and veal, the EEC would endeavour to fix the suspension of the levy at the highest possible level.⁷ Further concessions included the binding, at 20%, of the rate of duty on fresh, frozen or chilled bovine meat.⁸ Similar concessions were also made to Argentina and Uruguay.⁹ Despite concessions in the agricultural area and the wording of Article 3 of the Agreements (mutual co-operation in agricultural matters), the countries of Latin America remain dissatisfied with the concessions and the operation of the CAP.

The CAP poses a serious problem for Latin American producers since agricultural goods constitute over fifty per cent of the EEC's imports from the region.¹⁰ One particular aspect of the policy, the variable levy, has been criticised by Latin American exporters as an unduly protectionist device. Coupled these complaints, the common external tariff has also been criticised since it tends to reinforce the CAP and so excludes a large volume of exports from Latin America countries. The existence of non-tariff barriers further restricts the level of trade. As recognised in an Annex to all the agreements, the main growth area in trade between these regions stems from the Generalized System of Preferences (GSP). It is this device rather than the bilateral agreements which has been responsible for the growth of EEC-Latin American trade.

⁶ Op cit n 4, 28.

⁷ Idem.

⁸ Ibid, Article 4 of the Agreement.

⁹ Op cit n 4, 5.

¹⁰ COM (84) 105 Guidelines for the strengthening of relations between the Community and Latin America, Annex 1.

Recent Developments

Since the conclusion of the agreements between the EEC and the countries of Latin America, several developments have obstructed improvements in the established relations. The partnership priorities of the EEC have shifted away from Latin America towards Asia and Africa. The decline in the relationship is also attributable to other factors.

One particular aspect of this decline has been the conclusion of voluntary restraint agreements with these countries, covering various products. The most notable of these has already been referred to, the VRA in the sheepmeat and goatmeat sector. This VRA has been concluded with Argentina and Uruguay with the level of exports from these countries being set at 23,000 tonnes and 5,800 tonnes respectively.¹¹ Recent re-negotiations of these agreements have limited exports to the sensitive EEC market of France and Ireland to zero.¹² With respect to Brazil, a voluntary restraint agreement has been concluded in relation to manioc (an effort by the EEC to limit the use of cereal substitutes within the Community).¹³ Despite some concessions, notably on beef, the trade relationship between these two regions has continuously deteriorated since the signing of the Agreements.

Relations deteriorated still further in the wake of the dispute between the United Kingdom and Argentina over the sovereignty of the Falkland Islands and the imposition by the EEC of sanctions against Argentina. This hiatus was broken by two events; the resumption of dialogue between SELA and the EEC;¹⁴ and, the

¹¹ OJ 1980 L 275/13 (Argentina); OJ 1980 L 275/37 (Uruguay).

¹² Council Decision 84/309 OJ 84 L 154/49.

¹³ OJ 1982 L 219/58.

¹⁴ COM (84) 105 op cit n 11, 2.

conclusion of a Co-operation Agreement between the EEC and the member States of the Cartagena Agreement (the Andean Pact).¹⁵ As with the bilateral agreements of the 1970's the agreement's objective is to deepen, extend and diversify the parties economic and trade relations.¹⁶ The sole economic impact of this Agreement comes from the decision by the EEC to treat the Andean Pact members as one customs area. This allows them to benefit from the cumulative origin provisions of the EEC's GSP.¹⁷ This illustrates the point already made, that the main, perhaps sole, benefit which Latin American countries have derived from their association with the EEC comes, not from the bilateral agreements and agricultural concessions therein, but, from the operation of the GSP. This result is not surprising considering the fact that the EEC has other partnership priorities to which it attaches greater weight.. It is against this background that any evaluation of the future of the link between these two regions must be considered. The range of factors/interests which govern the EEC's relation with the ACP countries through the Lomé Convention, the relations with the Mediterranean countries and even the lack of relations with Eastern Europe serve to reinforce the lowly position of Latin America in the 'pyramid of privilege'.

The impact of enlargement

The enlargement of the EEC to include Spain and Portugal, two countries with historic, cultural and social ties with Latin America, will affect a reassessment of the position of Latin America in EEC policies. Spanish accession to the EEC with its policy of Hispanism

¹⁵ OJ 1984 L 153/1 (Members of the Group are Bolivia, Columbia, Ecuador, Peru and Venezuela.)

¹⁶ Preamble to the Agreement.

¹⁷ For a fuller discussion of the EEC's GSP see Part IV ch 5 of this Paper.

will add a new dimension to the relationship between the regions.¹⁸

Spain's declared policy towards Latin America, captured in Hispanism, centres on the implementation of four principles. Minet lists these principles as interdependence, continuity, non-discrimination and community.¹⁹ The aim of Hispanism is to bring about a social and cultural community between Spain and Latin America and to increase their economic co-operation. Despite this latter aim, trade between Latin America and Spain (and Portugal) constitutes only 8.7% of the latter's total trade.²⁰ Given this facet of the relationship, the Iberian accession may not bring about a radical change in the relationship between the EEC and Latin America, despite the Joint Declaration of Intent attached to the Spanish Act of Accession. However, it may tip the balance in favour of those member States who argue from a globalist development policy as opposed to the regional one favoured by the EEC.

The current state of the EEC's economy and the interests served by the CAP, suggests that future EEC policy on Latin America will focus on the maintenance of the EEC trade position in a world economy characterised by increased competition and increasing threats of protectionism, rather than encouraging the development of the relationship. This line of reasoning is supported, if on examination of the EEC's relations with the countries of Asia.

¹⁸ Muniz op cit n 3, 55. See also Joint Declaration of Intent on the development and intensification of relations with the countries of Latin America, OJ 1986 L 302/479.

¹⁹ Minet "Hispanismo and the Third World" in ed. Minet, Siotos and Tsakaloyanno Spain, Greece and Community Politics, 55.

²⁰ COM (84) 105 op cit n 11, Annex 1.

B. Asia

It is possible to differentiate two types of EEC relations with the countries of Asia. The first is in the form of an agreement between the EEC and ASEAN. The second is bilateral agreements with some former beneficiaries of the United Kingdom's Commonwealth Preference Scheme.

ASEAN

By virtue of the Bangkok Declaration of 1967, a loose inter-governmental association of Asian countries was formed.¹⁹ It included Indonesia, Malaysia, Phillipines, Singapore, Thailand, and it has become known as ASEAN (Association of South East Asian Nations).²¹ The development of institutions to service this association grew with its expanding activities.

Relations with the EEC began in 1975 with the establishment of an ASEAN — EEC Study Group. The outcome of this dialogue was the conclusion of an ASEAN — EEC Co-operation Agreement.²² Like the agreements with Latin American countries, the declared objective of the Agreement was to "consolidate, deepen and diversify" commercial and economic relations between the parties.²³ Article 1 of the Agreement grants each party most-favoured-nation treatment.²⁴ The remainder of the agreement is limited to

²¹ See Reyes "Building Bridges and Opening Doors," in ed Akrasanee and Rieger ASEAN-EEC Economic Relations (1984). This group has now six members, Brunei has joined.

²² OJ 1 1980 L156/7.

²³ The Preamble to the Agreement.

²⁴ *Op cit* n 22.

commercial, economic and development co-operation between the parties.²⁵

In relation to trade patterns, the EEC relies on ASEAN for such items as rubber, timber, palm oil and cattle feed. The increase in exports of this latter product to the EEC from Thailand, caused the EEC to conclude a co-operation agreement on manioc production, marketing and trade.²⁶ The agreement limits Thai exports of manioc to the EEC for the years 1982-86. However, Article 4 of the agreement by which the EEC agrees to safeguard Thailand's position on the EEC manioc market has been the cause of the failure of this agreement.²⁷ Unable to safeguard their position on the EEC market, Thailand has continued to expand its exports to the EEC. A new Agreement limiting exports for the 1987-1990 period has been concluded.

Of the six members of ASEAN, only Singapore and Brunei are not major exporters of primary products. While trade between ASEAN and the EEC is very important for the former, for the EEC it accounts for only a small proportion of trade. This explains the nature of the relationship between the parties, confined as it is to negotiations over GSP concessions.²⁸ As with Latin America, the interests of other partners such as the Lomé countries and the Mediterranean are considered more important than those of ASEAN. Even though concessions have been granted to these countries under the GSP, such concessions are limited by tariff

²⁵ Ibid. Articles 2-4. Article 5 of the Agreement establishes a Joint Co-operation Committee.

²⁶ OJ 1982 L 219/52.

²⁷ Ibid, 53, (see Council Decision 86/22 OJ L 155/8. A review of the 1982 agreement establishing quantities for the period 1 January 87 to 31 December 1990).

²⁸ See Corbet H "Issues Relating to the EC's Imports of ASEAN Primary Products", and Langhammer "ASEAN Manufactured exports in the EC markets," in ed Akrasanee and Rieger op cit n 21.

quotas, thereby nullifying the positive value of the concessions. The group as a whole does benefit under the rules of origin by being treated as one customs territory thereby allowing them to use the cumulative origin provisions of the GSP. Speaking of European interests in ASEAN, Harris and Bridges state;²⁹

"There must in consequence [considering the GSP] be doubt about the EC commitment to promote development of ASEAN trade with the Community, even though, since the EC-ASEAN ministerial meetings began, the EC has improved and extended its schemes.

Once again another group of countries in their relationship with the EEC have been frustrated by the regionalist orientation of its development policy and the desire to protect domestic agricultural producers and processors within the EEC. A similar picture emerges on examination of the EEC's bilateral relations with this area.

India, Bangladesh, Pakistan and Sri Lanka

The accession of the United Kingdom to the EEC in 1973 brought about a fundamental change in the trading environment for these countries. Excluded from the offer made to other Commonwealth Countries in Protocol 22 of the Act of Accession, these countries were left to negotiate individual or collective trade agreements with the enlarged EEC.³⁰ The major trade impact of the 1973 enlargement for these countries was the abolition of Commonwealth Preferences which they had previously enjoyed in

²⁹ Harris and Bridges European Interests in ASEAN, 33.

³⁰ Protocol 22 states that independent Commonwealth countries listed in Annex VI of the Act of Accession are offered Association. India, Pakistan, Bangladesh and Sri Lanka were not listed in Annex VI.

the UK market.³¹ Coupled with this the UK had to adopt the GSP of the EEC, the CET and the CAP. The position of these countries was further weakened because of the number of countries who would be in a more preferential situation on the UK market as a result of its adoption of the 'partnership priorities' of the EEC. This situation was very detrimental to the exports of agricultural and semi-processed agricultural products from these countries.

The solution offered by the EEC was the conclusion of bilateral trade agreements. Agreements were concluded between 1974 and 1976, and all of them exhibit a great degree of similarity. They are inspired by the desire to "consolidate, deepen and diversify" their commercial and economic relations.³² To achieve this the parties granted each other most-favoured-nation treatment.³³ Through the operation of the Joint Committee all efforts are to be made to promote the development and diversification of trade.³⁴ Agricultural concessions were listed in the Annexes to the Agreement, and were in the form of improvements to the EEC's GSP.³⁵ These concessions are for products which are of special interest to the Contracting Parties. For example, for India, tea; for Sri Lanka, dessicated coconut; and for Bangladesh, freshwater fish and tea. Unlike the Andean Pact Agreement and the ASEAN agreement, these four countries do not benefit from the cumulative origin provisions of the GSP's rules of

³¹ See Tulloch The Seven Outside: Commonwealth Asia's Trade with the Enlarged EEC (ch 2: The Trading Environment) and Ghai Asian Commonwealth Countries and the EEC. 33-37.

³² OJ 1974 L 82/1 (India); OJ 1975 L 247/1 (Sri Lanka); OJ 1976 L 168/1 (Pakistan); OJ 1976 L 319/1 (Bangladesh). [See OJ 1981 L 328/5 — Agreement for commercial and economic co-operation between the EEC and India.]

³³ Article 2 of each agreement.

³⁴ Article 4 of each agreement.

³⁵ Annex II to the Agreements lists the GSP concessions.

origin. The concessions do not really benefit the recipient country in its efforts to promote economic development. (More will be said of this point in Part IV of this paper).

One interesting feature of the relationship between the EEC and India is an agreement on cane sugar.³⁶ Originally a signatory to the Commonwealth Sugar Agreement, India, by virtue of Protocol 17 of the UK Treaty of Accession, was allowed to export sugar to the UK until 28 February 1975.³⁷ At that time it was envisaged that the CSA would either be abolished or be replaced by a Community wide agreement. As it turned out Protocol 3 of the first Lomé Convention continued the importation of cane sugar from those countries who were signatories to the Convention. The only developing country who was a member of the CSA and not a signatory to the Lomé Convention was India and special provisions were made for it. According to the terms of the agreement, which closely mirrors Protocol 3 to the Lomé Convention, the EEC undertook to import 25,000 tonnes of Indian cane sugar per annum for an indefinite period. This quantity was reduced to zero in July 1981. Following an improvement in sugar production in India in 1982, it demanded that its initial quota be re-established. The Council of Ministers decided that although the quota should be re-established, its level would not be 25,000 tonnes but 10,000 tonnes.³⁸

³⁶ OJ 1975 L 190/1.

³⁷ See Chapter 2 of Part IV of this Paper.

³⁸ See Terlinden: European Sugar Policy, for a discussion of Protocol 3 and the re-establishment of quotas for the export of sugar to the EEC.

of the Lomé Convention. What scope exists to improve this

The future for Latin America and Asia

The development of economic relations between the EEC and these two regions reflects the partnership priorities of the Community and the failure of the EEC to use the CAP as an instrument of commercial policy. Although the empirical evidence does not suggest that for agricultural products the Lomé Convention has been a significant source of trade diversion,³⁹ aspects of the agreement discriminate against other developing countries. Since the Lomé signatories are at the top of the EEC's "pyramid of privilege" they are able to influence the level of concessions given to all other EEC partners. This includes the major element of EEC policy towards the countries of Latin America and Asia, the GSP.⁴⁰

3. partial trade or individual product agreements for products of

The trade deterrence aspect of EEC relations with Latin America and Asia, reinforces the role of partners such as the Lomé signatories and the Mediterranean countries in the EEC's pyramid of privilege. Other reasons for the paucity of agricultural concessions given is the operation of the CAP and the influence of domestic processing industries within Europe. For example, exports of manioc from Brazil and Thailand have been restricted because of increased use of cereal substitutes within Europe, which threaten the COM in cereals. Exports of mutton and goatmeat from Argentina and Uruguay originally restricted by a VRA have been further restricted owing to the common organization of the market in these products. Exports of sugar from India have been curtailed through the demands of the Lomé Convention signatories and the perpetual EEC surplus in this product. And finally, exports of canned pineapples from Malaysia are subject to a restrictive tariff quota under the GSP, in an attempt to help domestic processing industries and the signatories

³⁹ The Courier No.99, the Kiel Study.

⁴⁰ Op cit n 29, 31.

of the Lomé Convention. What scope exists to improve this situation?

In a 1973 Commonwealth Secretariat study of the impact of enlargement on the trade patterns of the Asian Commonwealth countries, several suggestions were made to deal with the problems caused by enlargement. The solutions advocated are equally applicable to Latin America. They are:⁴¹

1. the establishment of a truly generous scheme of preferences, providing inter alia, for duty-free entry of all agricultural and processed goods of interest to these countries;
2. the conclusion of collective or bilateral trade agreement offering these countries concessions analogous to those offered to the ACP under the Lomé Convention;
3. partial trade or individual product agreements for products of export interest to these countries; and finally,
4. financial and technical compensation to enable adjustments to be made due to the loss of export markets.

Irrespective of the merits of these proposals, they face one substantial obstacle, the existence of the Lomé Convention. Any changes in the relationships established by the EEC would tend to upset the balance of concessions already given. The realistic evaluation of any future expansion of the EEC's relations with the countries of Latin America and Asia must take these factors into account and in doing so it may be concluded that no change is probable. Should any course be taken as a result of the enlargement of the EEC to include Spain and Portugal, it is likely to lead to a reduction in the already meagre scope of the agricultural concessions granted to these two regions. As one commentator concludes,⁴²

⁴¹ Ghia op cit n 31, 38-40.

⁴² Op cit n 29, 84.

"The real costs to Europe are likely to arise in terms of opportunities missed. Here the costs may be high in the long term but by then we shall be able to blame them on something else."

"The Pyramid of Privilege"

This part of the paper has outlined the nature of the EEC's relations with non-member States. From this outline a definite pyramid of privilege has emerged, those countries at the top of the pyramid are treated better than those at the bottom. For example the Mediterranean countries, their co-operation agreements entail industrial and agricultural trade concessions plus financial and technical co-operation. The next stage of the pyramid is occupied by the EFTA free trade agreements, which promise industrial free trade and concessions are given for processed agricultural products. The bilateral agreements concluded between the EEC and the countries of Latin America and Asia occupy the next stage down in the pyramid. Each of these three stages have one common feature, a Joint Co-operation Committee to further the aims of the agreements; 'to deepen and diversify their trade relations'. Such an institution is missing from the final two stages of the pyramid, those occupied by developed countries and by state-trading countries. The consultative machinery provided for the former merely relates to the harmonious development of relations between these countries and the EEC. Industrial trade is regulated through the operation of the GATT and for agricultural trade some concessions, albeit of limited import, have been made. For the state-trading countries there is not even consultative machinery, their industrial exports are restricted and agricultural exports are subject to strict control.

Another pattern to emerge from the outline is that agricultural trade concessions are linked to the type of production. For Mediterranean type products, a wide range of concessions are given on the basis that such products are not produced in sufficient quantity in the EEC. This basis serves as an explanation of the concessions given to the producers of tropical products.

CHAPTER 5: CONCLUDING REMARKS

"The Pyramid of Privilege"

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Another pattern to emerge from the outline is that agricultural trade concessions are linked to the type of production. For Mediterranean type products, a wide range of concessions are given on the basis that such products are not produced in sufficient quantity in the EEC. This basis serves as an explanation of the concessions given to the producers of tropical products.

Although these concessions are not to be found in bilateral agreements but in the EEC's GSP and the Lomé Convention. For the final group of products, temperate-zone products, concessions, if given, are extremely limited and often subject to quantitative control. The rationale for all the concessions given rests on the agricultural production structure within the EEC. Most of the concessions were made at a time when the EEC consisted of only nine member States. Since that time three Mediterranean states have acceded the EEC. How will this enlargement affect the future scope of concessions given by the EEC?

The Impact of Enlargement

It is possible to assess the impact of enlargement in terms of trade creation and trade diversion. Trade creation will occur through the adoption by Spain and Portugal of the EEC's CET and GSP. In relation to agriculture this will benefit the Asian countries but not Latin American countries since Spain and Portugal are already major consumers of their products.

Trade diversion will occur because Spanish and Portuguese adoption of the CAP. The concessions given to Mediterranean countries will be of limited value, due to the similarity of production between the Iberian countries and the Mediterranean countries. Trade diversion will also occur as the EEC will assume a large share of Portuguese and Spanish imports of agricultural products. For products such as beef and veal, milk and milk products, sugar and some cereals the level of EEC exports to Spain and Portugal will increase. This will displace American and Latin American agricultural exports. However, this trade diversion may improve the situation of New Zealand, as the pressure on the EEC milk market will not be as pronounced. Any attempt to quantify the levels of trade creation and trade diversion will be tentative since it is uncertain not only what impact the adoption of the CAP will have on Spanish and Portuguese production but also, what

internal reforms, if any, will occur to the CAP as a result their accession.

However, the accession of Spain and Portugal will increase the number of demands which the CAP attempts to satisfy. The nature of the policy and the level of prices established under it, suggests that the experience of the ten (structural surpluses and high budgetary expenditure), will become the experience of the twelve. It should be obvious that given the limited nature of the EEC's financial resources, some reform of the CAP is inevitable. Moreover, the level of Spanish and Portuguese economic development suggests that they will require financial assistance not only from the social and regional funds but also from the guidance section of FEOGA. These requirements will increase the demands for a reduction of the proportion of FEOGA guarantee section in the total EEC budget. This reduction necessitates some internal reforms of the CAP, a reduction in prices, intervention arrangements and the export refund system. Enlargement presents the EEC with an opportunity to develop a coherent agricultural trade policy. A policy which would complement the other policies of the EEC.

Solutions

The development of this policy will allow the EEC to order its relationships in a coherent fashion. This ordering is problematic since the range of agreements concluded by the EEC has devalued the significance of establishing a relationship with the EEC. The proposals made in this part are an attempt to establish a new type of relationship between the EEC and its partners. Their acceptance would bring about fundamental changes in the external relations of the EEC and necessitate changes to the nature of the CAP.

For the Mediterranean, the area most affected by the recent enlargement, it was envisaged that a new Mediterranean Policy

would be drawn up. This would encompass the development of political co-operation through the Euro-Mediterranean Forum; the encouragement of the regional development of all Mediterranean states from Algeria to Yugoslavia through the implementation of a Mediterranean Development Policy; and finally a Mediterranean Trade Policy to encourage the development of intra- and inter-regional trade. In relation to agricultural products, three avenues for progress were suggested. The first was the extension of the Turkish-EC relationship to other countries (i.e. the abolition of all customs duties on agricultural products). The second proposal envisaged the conclusion of product protocols for Mediterranean agricultural products and internal reforms to ensure the success of such protocols. The final and most ambitious proposal was for the conclusion of total free trade agreements between the EEC and the Mediterranean countries.

For the EFTA and State-Trading countries, a gradualist approach was recommended. For the former, this involved the adoption of the approach favoured by these countries in their own agricultural trade relations, bilateral agreements. It is envisaged that agricultural products would be divided into three categories, each having differing degrees of liberalization measures. This need to ensure compatibility between the EEC-EFTA trade arrangements and intra-EFTA trade arrangements was also present in the approach advocated for the five state trading countries (Bulgaria, Czechoslovakia, Hungary, Poland and Romania). With respect to these countries, it was envisaged that bilateral agreements would be concluded on the basis of the Finland-Czechoslovakia Free Trade Agreement. This would allow the development of reciprocal trade by the conclusion of annual product agreements.

Each of the proposals made reflect the pyramid of privilege which has emerged in the EEC's relations with other countries. However, they also seek to bring about some change in the nature of concessions by allowing for greater temperate-zone,

Mediterranean-zone and tropical-zone concessions. For temperate-zone products it is envisaged that increased concessions would be given only to EFTA and State-trading countries. Concessions for the "Un-Associables" will remain to be made in the context of the GATT. For tropical-zone products it is envisaged that the EEC would establish a generous GSP, providing duty-free entry for all tropical agricultural products. This would promote Latin American and Asian exports to the EEC.

Two factors restrain the EEC from improving its bilateral relation by the adoption of a common agricultural trade policy. These are: the existence of multilateral relations established since 1957 with 66 developing countries, currently in the form of the third Lomé Convention; and, the absence of any proposals on CAP reform which contemplate a development similar to that outlined above. It is these restraining factors which the remaining parts of the paper discusses.

The objectives set for this part in the introduction have been met. The history and current nature of agricultural concessions have been discussed and proposals have been made to accommodate these bilateral agreements within the framework of a common agricultural trade policy. The temptation exists for the EEC to adopt protectionist measures in order to make the adjustment necessary as a result of enlargement. This temptation is especially strong in the agricultural sector. It could lead to increases in the levels of intervention spending and export refunds thus necessitating a greater share in the EEC budget for the Guarantee Section of FEOGA. This would increase the pressure on the EEC's resources and prevent the development of other European funds. Reform of the CAP, taking into account the interests of those countries associated with the EEC, would enable the pace of integration to be accelerated. This would consolidate the progress already made and enable the EEC of twelve to become a more homogenous area. Such reform would also enable

the promise made by the Director-General of Agriculture to the College of Europe to be realised. As Claude Villain remarked;¹

"D'un façon général, je voudrais souligner que si nous tenons à jouer notre rôle d'exportateur et à faire notre part équitable du commerce mondial, la Communauté ne veut pas être un facteur d'anarchie."

declared that,¹

"... the Community must, without detracting from the advantages enjoyed by countries with which it has special relations, respond even more than in the past to the expectations of all the developing countries."

These "expectations" include increased and technical assistance to promote the process of development, the promotion of primary product agreements (which would lead to market stabilisation and increased export earnings), and the improvement of the Generalised System of Preferences (which would increase levels of manufacturing exports from the developing countries). As the above statement recognised, the EEC could only meet these expectations to the extent that they would not detract "from the advantages enjoyed by countries with which it has special relations". This part of the paper will trace the growth of these special relations, now known as the Lomé Convention, and it will examine their changing nature. An assessment can then be made of the extent to which these "special relations" have obstructed the EEC's efforts to meet the expectations of the developing countries.

How does the EEC view the relationship between its development co-operation policies and its other policies? The answer to this question may be gleaned from the following statement of Claude

¹ "L'état de la politique agricole commune." in ed Tracy and Hodac Prospects for Agriculture in the EEC.(1982) ed) 35, 44.

PART IV: THE DEVELOPMENT CO-OPERATION POLICIES OF THE EEC.

INTRODUCTION:

In the communique issued after the October 1972 Paris Summit of the Heads of State and Government of the Member States, it was declared that,¹

"... the Community must, without detracting from the advantages enjoyed by countries with which it has special relations, respond even more than in the past to the expectations of all the developing countries."

These "expectations" include increased and technical assistance to promote the process of development, the promotion of primary product agreements (which would lead to market stabilisation and increased export earnings), and the improvement of the Generalised System of Preferences (which would increase levels of manufacturing exports from the developing countries). As the above statement recognised, the EEC could only meet these expectations to the extent that they would not detract "from the advantages enjoyed by countries with which it has special relations". This part of the paper will trace the growth of these special relations, now known as the Lomé Convention, and it will examine their changing nature. An assessment can then be made of the extent to which these "special relations" have obstructed the EEC's efforts to meet the expectations of the developing countries.

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¹ European Political Co-operation (3rd ed) 35, 44.

Cheysson, Commissioner for Development. At the time of the signing of the first Lomé Convention, he stated,²

"If we are in earnest about wanting these countries to develop we must realise that the development aid policies to be pursued will be part and parcel of our general policies and not a separate part of our action. It is not "Sunday charity" which is needed, it will have to be thought of every day and in every aspect of our lives."

Of necessity, this implies that the EEC and the member States should co-operate;

- (i) on the external level; multilaterally, in institutions such as the UNCTAD and bilaterally, in relation to the agreements concluded between the EEC and various developing countries, and
- (ii) on the internal level; that is, in relation to common and national policies which indirectly affect the EEC's relations with developing countries. The most obvious example in this area is the CAP.

If the EEC's efforts in the area of development are to be successful it is necessary that there should be co-operation on both levels and a level of co-ordination between the two. Concessions granted in either multilateral or bilateral arrangements may be rendered meaningless if there is no co-ordination with the internal policies of the EEC and the member States.

Efforts have been made to achieve co-ordination and cohesion between the EEC's and the member States' policies on the external level. Similar efforts are not so prevalent on the internal level.³

² "Europe and the third world after Lomé." 30 World Today 51, 52.

³ E.g. COM (75) 94 Harmonization and Co-ordination of Development Co-operation Policies; and EC Bull Supp 5/82 Memorandum on the Community's Development Policy.

Given the predominantly agricultural nature of developing countries exports, it is the CAP which operates as an "indirect" factor limiting the success of the EEC's development policy. It is the problem of agricultural co-operation which this part of the paper addresses. As the 1980 resolution of the ACP-EEC Consultative Assembly noted,⁴

"... in the longer term, an adequate solution to this problem [of agricultural co-operation] and to all the anomalies in the agricultural trade relations between the Community and the developing countries can be found only if:

- the Community finally adopts an agricultural trade policy compatible with its development and policy.

Such a policy would have to meet the expectations of the developing countries and not detract from the EEC's special relations. The reconciliation of these competing demands does not promise to be an easy task for EEC policy-makers.

As negotiations on the Treaty of Rome neared conclusion, the French insisted, as a condition precedent for participation in the EEC, that a new and special relationship should be established with its dependent territories. Two different solutions were eventually agreed on:

- (i) A protocol on goods originating in and coming from certain countries and enjoying special treatment when imported into a member State. This protocol, referred to as the Morocco Protocol, allowed for the continuation of this special treatment when the Treaty entered into force; and,
- (ii) Part IV of the Treaty, which provided for the association of various overseas countries and territories (OCT).

⁴ See Focke K "From Lomé 1 to Lomé 2". Texts of the report and resolution adopted on 26 September 1980 by the ACP-EEC Consultative Assembly, 69, 74 (Para 44 of the Resolution).

CHAPTER 1: THE ROAD TO LOME.

Part IV of the Treaty of Rome

As Zartman notes, there are¹

" .. two poles of the economic debate ... autarkic self-reliance and open international co-operation. These poles are turned into the horns of a dilemma because in economics, as in security, no state is an island and because co-operation always poses the problem of domination. Thus between an independence that is impossible and an inter-dependence that is dangerous, middle solutions have to be found"

In the case of the EEC's special relations with the developing world, the middle solution is one of selective inter-dependence. The modern version of this middle solution, now known as the Lomé Convention, has its origin in part IV of the Treaty of Rome.

As negotiations on the Treaty of Rome neared conclusion, the French insisted, as a condition-precedent for participation in the EEC, that a new and special relationship should be established with its dependent territories. Two different solutions were eventually agreed on:

- (i) A protocol on goods originating in and coming from certain countries and enjoying special treatment when imported into a member State. This protocol, referred to as the Morocco Protocol, allowed for the continuation of this special treatment when the Treaty entered into force; and,
- (ii) Part IV of the Treaty, which provided for the association of various overseas countries and territories (OCT).

¹ The Politics of Trade Negotiations between Africa and the EEC (1971), 7.

The purpose of this association, as laid down in Article 131 of the Treaty of Rome, would be to "promote the economic and social development of the countries and territories and to establish close economic relations between them and the EEC as a whole".² This broad objective was further developed in Article 132 which provides, *inter alia*,³

"Association shall have the following objectives:

1. Member States shall apply to their trade with the countries and territories the same treatment they accord each other pursuant to this Treaty.

2. Each country or territory shall apply to its trade with member States and with the other countries and territories the same treatment as that which it applies to the European State with which it has special relations.

3. The member States shall contribute to the investments required for the progressive development of these countries and territories ..."

These objectives, and the means to achieve them, were amplified in Article 133-135 and the Implementing Convention attached to the Treaty. The timetable applicable to the elimination of customs duties between the member States was also applicable to the elimination of customs duties between the member States and the OCT.⁴ However, Article 133(3) introduced an element of non-reciprocity of concessions into the relationship, by allowing the OCT to levy customs duties "to meet the needs of their development and industrialization or produce revenue for their budgets". Given this limited concession to the principle of reciprocity, it was envisaged that Part IV and the Implementing

² Article 131 goes on to state that association shall serve to lead the inhabitants of the associated countries and territories to the economic, social and cultural development to which they aspire.

³ Five objectives are listed in Article 132.

⁴ Article 133(1).

Convention would lead to the establishment of a free trade area between the EEC and the OCT.

The Implementing Convention on the association of the OCT provided that the provisions of the Treaty applicable to the elimination of quantitative restrictions between the member States should also apply to the EEC's relations with the OCT. Import quotas open to one member State, with which the OCT State had special relations, would be converted into global quotas open to the other member States. The trading relationship was designed to place all member States on an equal footing. Equally, the Implementing Convention allowed for the spread of the burdens of association by establishing a development fund for the OCT. This fund would supplement the efforts of the OCT to promote economic and social development. As Zartman concludes,⁵

"Part IV of the Rome Treaty was designed to share among the European six, at least to some small extent, the burdens and benefits of the colonial past and to provide some limited benefits for the African colonies. It was a means of protecting colonial markets and assuring supplies of primary products for the six instead of the metropole alone and of opening the colonies to greater trade and investment."

The examination of Part IV of the Treaty in GATT raised several questions about its compatibility with the Agreement.⁶ For example, the Working Party questioned the permissibility under Article XXIV (GATT) of the simultaneous establishment and co-existence of a customs union and a free trade area. Using Article

⁵ "Europe and Africa, Decolonization or Dependency?" (1975-76) 54 Foreign Affairs 325, 327.

⁶ BISD 6th Supp 70, 90.

133(3) of the Treaty of Rome the view of one delegation was that:⁷

- (a) the OCT constitutes much more than follows from the definition of a free trade area as laid down in Article XXIV(8)(b) GATT;
- (b) Article 133(3) gives the OCT power to levy new duties. This is contrary to the definition of a free trade area. Moreover there would be no guarantee that tariffs would be eliminated on substantially all trade between the constituent territories; and finally
- (c) Article XXIV is inappropriate to underdeveloped countries.

The Working Party recognised the importance of this legal question, but they also realised that to prohibit the simultaneous formation of a customs union and a free trade area would introduce into the agreement a restrictive provision which it did not contain. However, the views expressed above are worthy of further consideration, especially since the Harberler Report doubted whether Part IV contained the necessary characteristics to promote development.⁸ Economic integration will bring benefits if, as Matthews has noted,⁹

- "(i) the economies of the partner countries are actually very competitive but potentially very complimentary and
- (ii) the amount of trade between them represents a large proportion of their total external trade."

It was doubted that Part IV would actually lead to the creation of a free trade area, the Working Party viewed it as merely an extension of existing preferences to other countries. As such it would be contrary to the provisions of the GATT, and yet the

⁷ Ibid 104.

⁸ Trends in International Trade: A Report by a Panel of Experts (1958).

⁹ The Association System of the EC, 85.

Working Party did not reach this conclusion. Instead, a series of studies, relating to the possible trade impact of Part IV, were recommended.¹⁰ As Barnes concludes,¹¹

"The Working Party had to report a deadlock. But subsequent developments suggest that those who were attacking the association provisions of the Treaty neither expected that the six would be persuaded to abandon the concept of association nor were ready themselves to take any kind of counter measures. It would seem probable that they were trying to influence the level of the common external tariff (CET)."

These attempts to influence the level of the CET were to be successful, but it can be questioned whether reductions in the CET were a direct result of external pressure rather than internal pressure. This internal pressure, in the form of a global development co-operation policy first manifested itself in Article 136 of the Treaty of Rome, which limited the operation of the implementing Convention to five years.

The Yaoundé Conventions

This first period of association between the EEC and the OCT was dominated by the political independence of the OCT. This necessitated the renegotiation of the provisions on Association. It has been noted that,¹²

"The merit of this first experiment between the EEC and the Associated African States and Madagascar

¹⁰ Op cit n 6, 102.

¹¹ Europe and the Developing World (Part IV of the Rome Treaty) (1967), 37.

¹² Ibid, 40.

(AASM) is that it actually existed and that it paved the way for the future."

The result of this experiment was the Yaoundé Convention of 1963 which recognised the new political and legal context of association policy. In essence, the Convention marked the continuation of Part IV of the Treaty of Rome. However, notable differences existed. The Convention was signed by independent states. Instead of the creation of one large free trade area, Yaoundé provided for the establishment of individual free trade areas between the EEC and each of the AASM. Customs duties and other trade restrictions were to be abolished at the same rate as those between the members of the EEC; a commitment similar to that contained in Part IV of the Treaty.

In relation to agricultural products, the Convention assured the AASM that their interests would be taken into account when the CAP was being formulated. During the period before the implementation of any common organization of the market (COM), the AASM would benefit from the treatment applicable to trade within the EEC. The only product exported by the AASM for which a COM had been established, at the time of the negotiation of the Convention, was rice. The Convention allowed the AASM to benefit from the inter-EEC treatment for traditional export quantities. For quantities in excess of the traditional level of exports, the AASM received preferences as against all other non-EEC suppliers.¹³

The scope of the agricultural concessions given to the AASM was restricted by two factors. Firstly, the reduction of the CET on various tropical products such as coffee, cocoa, pineapples and coconuts. Secondly, the retention of the German import quota on bananas originally agreed on in 1957, these bananas coming from

¹³ See Twitchett C.C. Europe and Africa: From Association to Partnership (1978) ch 5 The Yaoundé Convention of 1963.

Latin American suppliers. Once again, the conflict between a regional development policy (concentrating on the AASM) and a globalist policy (extending benefits to all developing countries) surfaced during the negotiations of the Convention. In an effort to improve the geographic balance of the EEC's development policy, a Joint Declaration of Intent was issued, offering the prospect of association to Commonwealth countries having economic and production structures comparable with the AASM.¹⁴

International reception of the Convention was not enthusiastic. The GATT Working Party report on the compatibility of the Convention with the agreement canvassed the same sorts of questions as the 1957 review of Part IV had.¹⁵ It was doubted whether a free trade area could be established, within the meaning of this phrase in Article XXIV (GATT), between the EEC and each of the AASM.¹⁶ Some members of the Working Party expressed the view that the Convention was merely an extension of the preferential arrangements agreed upon in 1957.¹⁷ Whilst others questioned the advisability of establishing a free trade area between industrialized and developing countries and the insistence of the former on reciprocal trade advantages from the latter.¹⁸ The Working Party did not reach any firm conclusions, satisfying itself by merely reporting the views expressed.¹⁹

¹⁴ See Zartman *op cit* n 1 ch 3. Negotiations with Commonwealth Africa.

¹⁵ BISD 14th Supp 100.

¹⁶ Ibid, 101 and 108.

¹⁷ Ibid, 104.

¹⁸ Ibid, 105.

¹⁹ Ibid, 115.

The second Yaoundé Convention, concluded in 1969, met with a similar fate in its examination by the GATT Working Party.²⁰ At this time, the EEC claimed that Yaoundé II had created a free trade area between the EEC and each of the AASM, thereby completing the process which had started in 1957.²¹ This claim is only partially true. A free trade area had been established in relation to industrial products, in the sense that their importation were now free of customs duties and taxes having an equivalent effect. For agricultural products the situation had changed dramatically since 1957. As Article 2(2) of the second Yaoundé Convention recognised,²²

"Toutefois, les dispositions du paragraphe 1 ne préjugent pas du régime d'importation réservé aux produits

- énumérés à la liste de l'annexe II du traité, dès lors qu'ils font l'objet d'un organisation commune des marches au sens de l'article du traité;
- soumis à l'importation dans la Communauté de la mise en oeuvre de la politique agricole commune."

In Part IV of the Treaty of Rome, and to a lesser extent in the first Yaoundé Convention, the AASM benefitted from the treatment which the member States had applied between themselves in relation to agricultural products. Between 1963 (Yaoundé 1) and 1969 (Yaoundé II) the CAP had been formulated, and a new form of treatment for AASM agricultural exports was required. This new form of treatment elaborated on in Protocol I to Yaoundé II, granted the AASM a margin of preference over third countries but denied them benefits which they had previously enjoyed under Part IV and Yaoundé 1.²³ Once again the internal policy of the

²⁰ BISD 18th Supp 133.

²¹ Ibid, 134.

²² JO 1970 L 282/1.

²³ Ibid, 7.

EEC, in the form of the CAP, had adversely affected the nature of its external policy.

The level of preferences granted to the AASM had suffered a major decline. It would be incorrect to assume that the only factor governing this decline was the introduction of the CAP. Other factors were also at work. Reductions in the levels of the CET had occurred as a result of multilateral trade negotiations. Another major factor was the introduction of the generalised system of preferences by the EEC in 1971. Although the trade provisions were an important aspect of the Yaoundé Conventions, they were not its only provisions. The operations of the European Development Fund were an important attraction of the relationship, indeed it could be stated that they were its only attraction. Tariff preferences although important, are not sufficient in themselves to encourage in the process of development. Speaking of the trade effects of the Association of the AASM with the EEC. Quattrra remarked,²⁴

"It would be difficult to argue that the association had a significant impact on trade flows between the associated African countries and the EEC or a significant adverse impact on the exports of non-associated developing countries to the EEC."

Despite its inadequacies as a trading relationship, its importance as an aid relationship ensured its continuation. A turning point in the EEC's association policy was approaching and with it, the end of the concept of association.

²⁴ "Trade Effects of the Association of African Countries with the EEC." IMF Staff Papers Vol XX, 499, 530.

The End of Association

The turning point in the EEC's association policy occurred by virtue of the accession to the EEC of another colonial power, the United Kingdom. As with France in 1957, the 1973 Act of Accession made special provision for the UK's former colonies. This special provision was Protocol 22, essentially a repeat of the Joint Declaration of Intent of April 1963.²⁵ Protocol 22 offered independent Commonwealth countries three options:

- "—participation in the Convention of association, which, upon the expiry of the Convention of association signed on 29 July 1969 [Yaoundé II], will govern relations between the EEC and the AASM which signed the latter Convention;
- the conclusion of one or more special Conventions of association on the basis of Article 238 of the EEC Treaty comprising reciprocal rights and obligations, particularly in the field of trade; and
- the conclusion of trade agreements with a view to facilitating and developing trade between the Community and those countries."

This offer was made to those countries listed in Annex VI, the African, Caribbean and Pacific Commonwealth countries. The Commonwealth countries in Asia were specifically excluded. Most of the countries accepted the first option and they joined with the AASM to negotiate a new Convention to govern their future relations with the EEC. In its memorandum on the future relations of the EEC with these states, the Commission noted that EEC policy,²⁶

²⁵ Op cit n 1, ch 3. Zartman discusses the Declaration of Intent and the reception of the Declaration within African Commonwealth Countries.

²⁶ EC Bull Supp 1/73. Renewal and Enlargement of the Association with the AASM and certain Commonwealth Developing Countries, 1.

"... will have to achieve a synthesis between the various advantages granted and guaranteed to the present partners of the Association on the one hand and, on the other, a genuine renovation of the Association, the enlargement of which will require very important changes and additions."

The Commission went on to elaborate on the content of the new Convention.

In order to maintain the results of the past, the new trade provisions were to be as advantageous of those guaranteed under the Yaoundé Conventions. The provisions would serve as a framework for improving the system applicable to the imports of agricultural and processed agricultural products which were either similar to, or competitive with, EEC products. In other words, the new Convention would seek to maintain the margin of preferences given under the Yaoundé Conventions.²⁷ To ensure compliance with the provisions of the GATT, the Commission recommended that the Associates grant them mfn treatment and some reverse preferences. The new Convention would lead to the establishment of a free-trade area.²⁸ The granting of reverse preferences in the Yaoundé Conventions was subject to adverse criticism by members of the GATT Working Party examining the arrangement. It was pointed out that Part IV of the GATT, allowed developing countries not to extend reciprocity to developed countries. The Commission suggested that the problem of reverse preferences should be dealt with through the use of derogations. This method had been provided for in Protocol 2 of Yaoundé II and the Arusha Agreement between the EEC and Uganda, Tanzania and Kenya.²⁹ In the discussion of the problem of reverse preferences, the Commission emphasised the need to

²⁷ Ibid, 8.

²⁸ Ibid, 2 and 14.

²⁹ Ibid, 15.

comply with the requirements of Article XXIV and the general principle of non-discrimination. This principle of non-discrimination was also emphasised in relation to the application of quantitative restrictions by the Associates.³⁰

In conclusion, the Commission guidelines for the future relations of the EEC with the Associates argued for the continuation of the trading relationship established by the Yaoundé Conventions. In relation to agricultural products, the Associates would have a margin of preference over third countries. Excise duties on tropical products would be removed and the interests of the associates would be taken into account in the preparation of the non-tariff measures of the CAP. The African, Caribbean and Pacific countries (the ACP) had a different vision of the new Convention. Their guiding principles included:³¹

- recognition of the principle of non-reciprocity in trade and tariff concessions;
- revision of the rules of origin to facilitate the development of the ACP;
- free and assured access to EEC markets for all products including processed and semi-processed agricultural products, irrespective of whether or not they were subject to the provisions of the CAP;
- special arrangements for certain products, and in particular, sugar, bananas and citrus; and finally,
- the guaranteeing to ACP countries of stable, equitable and remunerative prices in EEC markets for their main products in order to allow them to increase their export earnings.

The ACP group were clearly seeking a qualitatively new relationship with the EEC, one which would promote their

³⁰ Ibid, 17.

³¹ See Dadoo and Kuster "The Road to Lomé" in ed Von Geusau The Lomé Convention and the NIEO (1977) and Pinder J. "The Community and Developing Countries: Associates and Outsiders." (1974) 12 JCMS 53.

economic development without impinging on their economic independence, to any great extent. The EEC was seeking to maintain the relationship established under Part IV and carried on through Yaoundé. A reconciliation between the two groups was reached and the next chapter examines the content and extent of this reconciliation.

"to establish a new model for relations between developed and developing States compatible with the aspirations of the international community towards a more just and balanced economic order."

The means to achieve this end include the development of co-operation and trade among the ACP States and the promotion of trade co-operation between the ACP States and the EEC. This chapter will examine the trade and other provisions of the Convention which establish a 'new model for relations' between the developed and developing States.

Trade Provisions

The basic trade provision of the Lomé regime is that ACP products may be imported into the EEC free of customs duties, charges having equivalent effect and quantitative restrictions.¹ The basic obligation of the ACP states is to apply the principle of non-discrimination in their relations with the EEC.² The concept of reverse preferences has disappeared and the ACP need only extend *most favoured nation* treatment to the EEC. The trade regime, therefore,

¹ Cf. 1974 L. 2502, 5. (192 Record of the Presidency.)

² Article 3 Lomé I and Lomé II. Article 139 of Lomé III. The text of each of the Conventions is reproduced in the Courier, no.30 (Lomé I), No.32 (Lomé II) and No.39 (Lomé III).

³ Article 136 Lomé III.

CHAPTER 2: LOMÉ, A NEW MODEL FOR RELATIONS BETWEEN DEVELOPED AND DEVELOPING STATES?

The Preamble to the first Lomé Convention recognises the resolve of both the EEC and the ACP States,¹

"to establish a new model for relations between developed and developing States compatible with the aspirations of the international community towards a more just and balanced economic order."

The means to achieve this end include the development of co-operation and trade among the ACP States and the promotion of trade co-operation between the ACP States and the EEC. This chapter will examine the trade and other provisions of the Convention which establish a 'new model for relations' between the developed and developing States.

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¹ OJ 1976 L 25/2, 5. (7th Recital of the Preamble.)

² Article 2 Lomé I and Lomé II. Article 130 of Lomé III. The text of each of the Conventions is reproduced in the *Courier*, no.30 (Lomé I), No.58 (Lomé II) and No.89 (Lomé III).

³ Article 136 Lomé III.

meets some of the objectives set for it by the Commission and the ACP States.

It ensures the continuation of the free trade system established under the Yaoundé Conventions, with the principle of liberalization at the centre of this system. However, the absence of reciprocity, one of the objectives of the ACP negotiators, indicated that the Convention would not comply with the provisions of Article XXIV GATT. On presentation of the Lomé Convention to the GATT, the EEC representative, noting this conflict with the provisions of Article XXIV, argued that the Convention should be examined "in the light of the totality of the objectives" of the GATT.⁴ This argument was necessary since the Lomé Convention could not be accepted under Article XXIV.

Although Article 2(1) of the Convention allowed for the removal of customs duties and charges having equivalent effect, this applied essentially only to industrial products. Article 2(2) laid down the treatment applicable to agricultural products, it read,⁵

"(a) Products originating in the ACP states:

- listed in Annex II of the Treaty when they come under a common organization of the market within the meaning of Article 40 of the Treaty; or
- subject, on importation into the Community to specific rules introduced as a result of the implementation of the common agricultural policy;

shall be imported into the EEC notwithstanding the general arrangements applied in respect of third countries in accordance with the following provisions;

- (i) those products shall be imported free of customs duties for which EEC provisions in force at the time of importation do not provide, apart from customs duties, for the

⁴ BISD 23rd Supp 46, 47.

⁵ Op cit n 1, 11-12. The current provision is Article 130(2) Lomé III.

- application of any other measure relating to their importation,
- (ii) for products other than those referred to under (i), the EEC shall take the necessary measures to ensure, as a general rule, more favourable treatment than the general treatment applicable to the same products originating in third countries to which the most-favoured-nation clause applies."

In relation to agricultural products subject to the CAP, the basic import regime remains the same as it was under Yaoundé. The demands of the ACP for totally free access for all agricultural and processed agricultural products, irrespective of whether or not they are subject to the CAP, has not been met. However, the level of concessions given are more generous than in any other EEC arrangement with a third country. In detail, these concessions include:

Beef and Veal:⁶ Exemption from customs duties for all products covered by the COM. This exemption may be suspended if imports exceed a quantity equivalent to the EEC average of beef and veal imports from this source, for the years 1969-1974, allowing for an annual growth rate of 7%. The EEC allows special treatment for traditional exporters (Botswana, Kenya, Madagascar, Swaziland and Zimbabwe) in the form of a suspension of import duties within a tariff quota. The quota which reflects the traditional level of exports to the EEC.

Cereals and Rice:⁷ Preferential treatment in this sector extends from the non-application of the fixed component of the third country levy (processed cereal and rice products) to the reduction

⁶ Council Reg.486/85 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the ACP States and the OCT. OJ L 61/4, 6. (Title 1.)

⁷ Ibid, Titles V and VI 7-8.

of the third country levy by a percentage and a fixed amount (paddy rice and husked rice).

Fruit and vegetables:⁸ Preferential treatment includes the exemption or reduction of customs duties. These advantages are limited by the imposition of a marketing timetable and/or a tariff quota. For example, radishes benefit from exemption and no timetable, whereas onions, tomatoes and strawberries benefit from a 60 per cent reduction of custom dusties for a specific period and for a specified amount. Processed fruit and vegetable products are exempt from customs duties for all products covered by the COM. The additional duty on sugar for particular preserves and juices has been abolished.

— **Other products:**⁹ In this area the concessions range from exemption from customs duties (oil seeds, tobacco) to the suspension of the variable component for certain goods processed from agricultural products (tapioca and sago).

Despite the fact that over 94% of the ACP products subject to the CAP obtained exemption from customs (protective) duties, the ACP remain dissatisfied with the concessions given by the EEC. During the signing ceremony of the second Lomé Convention, the President of the ACP Council of Ministers stated,¹⁰

"[we] could not escape a feeling of deep frustration that the EEC could not finally respond positively to our legitimate claims for unhindered access for our agricultural products, insignificant as they are, to the European market."

⁸ Ibid, Titles VII and VIII 9-12.

⁹ Ibid, Title X-XIV 13-16.

¹⁰ H.Bernard St.John, Courier No.58, 4, 5.

In recognition of this frustration, Article 2(2)(b) of Lomé II reads,¹¹

If during the application of this Convention, the ACP States request that new lines of agricultural production or agricultural products which are not the subject of specific arrangements upon the entry into force of this Convention should benefit from such arrangements, the Community shall examine these requests in consultation with the ACP States.

The apparent liberality of this provision was circumscribed by a EEC declaration which limited the examination to those products "for which there would be real possibilities of export to the Community" and insofar "as these exports might assume an important position in the exports of one or more ACP States".¹²

This provision has been invoked by the ACP States. For example in 1982¹³ the ACP States requested that the EEC should consider:

- (i) the prospect of giving preferential treatment to strawberry imports during the off-season in Europe. (This request was met. Lomé III allows for a 60% reduction of custom duties from 1 November to the end of February within the limits of a quota of 700 tonnes.);
- (ii) the effect of the increase in the coefficient used to calculate the variable component of the import levy on processed cereal products, in particular wheat, bran and wheat residue. The increase in the coefficient entailed an increase in import duties. (The EEC agreed to consider ways of giving the ACP States genuine

¹¹ Op cit n2. This is now Article 130(2)(b) Lomé III.

¹² Annex XXVI Lomé II.

¹³ See The 1982 Annual Report of the ACP-EEC Council of Ministers, 7.

preference over third countries. However, Lomé III did not give the ACP States any level of preference.)

Delays in the EEC decision-making on these requests led to the inclusion of Article 130(2)(c) in the 1985 Convention. It reads,¹⁴

"... the Community shall, in the context of the special relations and special nature of ACP-EEC co-operation, examine on a case-by-case basis the requests from the ACP States for preferential access for their agricultural products to the EEC market and shall notify its decision on these reasoned requests within not more than six months of the date of their submission."

The Article goes on to instruct the EEC to take account of the possibilities offered by the off-season market and the concessions granted to other developing third countries.

Despite the extensive nature of the preferences accorded by the EEC to the ACP States for agricultural products, the share of ACP States in the EEC's agricultural imports from developing countries has actually declined since 1975.¹⁵ This decline occurred despite the fact that each of the Conventions include provisions on trade promotion. Trade preferences and trade promotion are obviously not sufficient to encourage the growth of the ACP's agricultural export trade. Lomé II recognised the importance of agricultural and rural development in the ACP States. The basic objective of agricultural co-operation between the parties was,¹⁶

¹⁴ Op cit n2, 32.

¹⁵ See Courier No.98 "The Kiel Study" 61-91. Table 6: Changes in Market Shares and Regional Concentration of ACP Exports to the EEC, 1975 and 1982, 67.

¹⁶ Article 83 Lomé II op cit n2, 21. (See Title 1 of Lomé III, ch 1 Agricultural Co-operation and food security op cit n2, 15-17.)

"to assist [the ACP] in their efforts to resolve problems relating to rural development and the improvement and expansion of agricultural production for domestic consumption and export and problems they may encounter with regard to security of food supplies for their population."

The basis of this co-operation will be technical and financial assistance in the promotion of integrated rural development projects. Such projects have an internal focus. They aim to achieve security of food supplies in the ACP states, through such measures as better use of factors of production and the extension of secondary and tertiary back-up activities. Through the internal development of agricultural production it is hoped that internal requirements will be satisfied and that the standard of products for export will be improved. This will increase ACP export earnings and so promote the process of development. Speaking of the future of ACP trade exports to the EEC, Twitchett observed,¹⁷

"The only way ahead for the ACP is a major investment in quality control and more efficient local management of agricultural production, possibly combined with a vigorous trade promotion programme."

The trade provisions outlined above may be sufficient to encourage the development of ACP trade, if the ACP take advantage of measures included in the Convention, especially the agricultural co-operation provisions. The development of agricultural processing facilities in the ACP could promote their development. However, other provisions of the Conventions could act as a positive disincentive to the diversification of ACP trade. One such provision is the scheme for the stabilization of export earnings, which the next section of the paper discusses.

¹⁷ "Patterns of ACP/EEC Trade" in ed Long F. *The Political Economy of EEC Relations with ACP States* (1979) 145, 171.

The Stabilization of Export Earnings System

During the negotiations for the Lomé Convention, the ACP States insisted that the Convention include some means of guaranteeing to the ACP States stable, equitable and remunerative prices in the EEC market for their main products. The ACP States hoped that this would increase their export earnings and provide funds for development. However, the EEC had also recognised the need to ensure adequate stability of export earnings. Protocol 22 stated,¹⁸

"The Community will have as its firm purpose the safeguarding of the interests of all the countries referred to in this Protocol whose economics depend to a considerable extent on the export of primary products"

The Commission memorandum on the contents of the new Convention recognised that trade liberalization and spontaneous efforts to increase sales to the EEC could not solve the problem of export earnings instability. Previous efforts to alleviate the problem had failed to provide a lasting solution. Article 17(3) of the first Yaoundé Convention had allowed EDF aid to be used,¹⁹

"[in] the field of diversification and production, for measures essentially intended to make marketing possible at competitive prices on the Community market as a whole."

Article 17(4) allowed EDF aid to be used to alleviate "the effects of temporary fluctuations in world prices". These provisions provided some relief to the AASM against fluctuations caused by

¹⁸ Part III of Protocol 22.

¹⁹ See Zartman "The Politics of Trade Negotiations between Africa and the EEC" ch 2, Negotiating the Yaoundé Convention and Twitchett CC Europe and Africa: From Association to Partnership ch 5 The Yaoundé Convention of 1963.

the phasing out, during the period of the operation of Part IV of the Rome Treaty, of the French suprix system. The suprix system served to mollify some of the effects of fluctuating prices of exported primary products to the metropole. During the negotiations for Yaoundé II, the AASM endeavoured to decrease the instability of their export earnings by proposing a system of minimum price guarantees for tropical product exports to the EEC. The proposal was not accepted by the EEC and Yaoundé II repeated the provisions of Yaoundé I relating to price stabilization guarantees. Article 21 of Yaoundé II, repeating the provision of Article 17(4) Yaoundé I, allowed advances to be made to the stabilization funds of the AASM. However, Article 20 of Yaoundé II allowed grants-in-aid to be made, in exceptional circumstances, where a drop in world market prices resulted in 'difficulties of a specialised and exceptional nature'. This provision could not be used to alleviate 'a situation of chronic instability of export earnings'.²⁰

The EEC had a choice between two methods in the implementation of the pledge given in Protocol 22. It could opt for a system of commodity agreements which would alleviate export instability by price and quantity guarantees or it could adopt a system for the stabilization of export receipts, a form of compensatory financing. The problems associated with the first option were manifold. Firstly, a commodity agreement would have to include all major commodity producers and consumers. The EEC and the associating countries would not be the sole parties to such agreements. Secondly, past experience did not augur well for this option. Commodity agreements had a record of failure, especially in relation to the price objectives of the agreements. Finally, not all products exported by the associated countries would be suitable for commodity agreements. As a result of these and other problems, the Commission advocated a system of export

²⁰ JO 1970 L 282/1, 17.

earnings stabilization.²¹ As Persuad states, the attraction of this type of scheme is obvious,²²

" ... it does not, as in the case of price regulation arrangements lend itself to price raising policies and because it does not interfere with the operation of market forces."

The Commission memorandum recognises these advantages of compensatory financing by stipulating that the scheme must 'not interfere with the free play of market forces'; 'create obstacles to international trade'; 'be compatible with world agreements where they exist for the same products'; and not hinder the conclusion of new commodity agreements.²³ As a result of these stipulations, the EEC offered a guarantee, albeit limited, of stabilising the export receipts from certain primary products exported by the ACP to the EEC. The scheme, which was to become known as STABEX, was one of the reasons why the Convention was hailed as a new model for relations between developed and developing nations. Article 16 of the first Lomé Convention lists as the aim of the scheme to remedy,²⁴

" ... the harmful effects of the instability of export earnings and ...thereby enabl[e] the ACP States to achieve the stability, profitability and sustained growth of their economies."

The means to this end is the stabilization of export earnings of certain primary products exported by the ACP on which the ACP

²¹ EC Bull Supp 1/73 Renewal and enlargement of the association with the AASM and certain Commonwealth developing countries, 17-21.

²² "Export Earnings from Commodities: Export Earnings Stabilization in the Lomé Convention" in ed Von Geusau The Lomé Convention and the NIEO (1977) 81-91, 81.

²³ EC Bull Supp 1/73 op cit n21, 19.

²⁴ OJ 1975 L 25/1, 14.

States are dependent and which are affected by price and/or quantity fluctuations. The products covered are selected on the basis of:²⁵

- "(i) the importance of the product to employment in the ACP State, the deterioration in the terms of trade between the EEC and the concerned ACP States and the differing levels of development of individual ACP States; and,
- (ii) the dependence of the economies of the ACP countries on receipts from these traditionally unstable source of export earnings. (Instability resulting from price and/or quantity variations.)"

Originally twelve categories of products were selected; groundnut products; cocoa products; coffee products; cotton products; coconut products; palm, palm nut and kernel products; raw hides, skins and leather; wood products; fresh bananas; tea; raw sisal and iron ore. (A total of twenty-nine individual items.) Article 17(3) of Lomé I allowed for the expansion of the product list to include products on which the economies of one or more ACP State depended, to a considerable extent and in which sharp fluctuations affect export receipts. This provision was used during the course of Lomé I to expand the product coverage and re-negotiations of the Convention have resulted in a product list of forty-eight products.²⁶

The system is brought into operation when these products are either released for consumption in the EEC or brought under the inward processing arrangements there, in order to be processed.²⁷

²⁵ Ibid, Article 16 (now Article 147 Lomé III). See also Hasenpflug "The Stabilization of Export Earnings in the Lomé Convention: A Model Case?" in ed Sauvart and Hasenpflug The NIEO (1977).

²⁶ Op cit n2, 35. Article 148 Lomé III.

²⁷ Ibid, 34. Article 147 Lomé III.

In special cases, derogations may be made from this provision to allow exports of the products in question to any destination to be used for the purpose of calculating the transfer.²⁸ In order to determine eligibility for a transfer the Conventions establish two thresholds; a dependence threshold and a trigger threshold. For each ACP State and for each product a reference level is calculated. This level corresponds to the average of export earnings during the four years preceding each year of application.²⁹ A request is triggered on the basis of results, if the ACP States' export earnings for each product are at least a certain percentage below the reference level.³⁰ An ACP State becomes eligible for a transfer if earnings from the export of the product(s) to all destinations represented a certain percentage of its total earnings from merchandise exports (the dependence threshold). Lomé I fixed the percentages at 7.5%, these were reduced to 6.5% by Lomé II and to 6% by Lomé III. For the least developed, land locked and island ACP States the progression has been from 2.5% to 2% to 1.5%.

The level of the transfer is decided by the Commission, to whom applications are addressed, and will usually be the difference between the reference level and actual earnings. The Commission may refuse to authorise a transfer if it is shown that the fall in export earnings from exports to the EEC is the result of a trade policy measure adopted by the ACP State which adversely affects those exports.³¹ The funds allocated to the scheme have risen from 375 million units of account for the five years of Lomé I to 550 million for Lomé II and presently stand at 925 million ECU

²⁸ Ibid, 35. Article 150(3). Lomé I.

²⁹ Ibid, 36. Article 158(3). (2).

³⁰ Ibid, 37. Article 161(1).

³¹ Idem. Article 163(b). 173 Lomé III.

for the duration of Lomé III.³² The level of the funds also provides another reason why a transfer may either not be given or may not be given in full. Lomé II introduced a provision allowing for the reduction of transfer should the funds, which are divided into annual instalments, prove insufficient to meet transfer requests, even allowing for advances from the next year's instalment.³³

Assuming that the level of funds is sufficient, the ACP State requesting assistance will receive the transfer. Lomé I provided that the recipient ACP State should decide how the resources transferred will be used.³⁴ However, Lomé II introduced a rider to this freedom, by stating that the transfers should be used to support the overall objectives of the STABEX system.³⁵ As Article 23(2) of Lomé II stated,³⁶

"... transfers must be devoted to maintaining financial flows in the sector in question or, for the purpose of promoting diversification, directed towards other appropriate sectors and used for economic and social development."

This obligation is not the only one imposed on the ACP States by the STABEX scheme. With the exception of the least developed ACP States, all ACP States are expected to contribute to the scheme, if,³⁷

³² Ibid, 35. Article 152.

³³ Ibid, 36. Article 155.

³⁴ Op cit n2, 16. Article 20 Lomé I.

³⁵ Op cit n2, 12. Article 23(2).

³⁶ Idem.

³⁷ Op cit n2, 39. Article 173 Lomé III.

- "(a) the unit value of the product under consideration exported to the EEC was higher than the average unit value during the four years prior to the preceding year; and,
- (b) the quantity of the same product actually exported to the EEC was at least equal to the average of the quantities exported to the EEC during the four years prior to the preceding year; and,
- (c) the earnings for the year and the product in question amount to at least 106% of the average of earnings from exports to the EEC during the four years prior to the preceding year."

Assuming these conditions are satisfied simultaneously, the ACP is expected to contribute an amount equal to the difference between actual earnings derived from exports to the EEC during the preceding year and the average of earnings from exports to the EEC during the four years prior to the preceding year. The contribution may be direct to the system or by deduction from its transfer rights.³⁸

The STABEX system undoubtedly satisfied not only the demands of the ACP during the negotiations of Lomé I but also the obligation assumed by the EEC in Protocol 22. However, questions arise. How well has the system satisfied the ACP States? Is STABEX the best way of satisfying the obligations contained in Protocol 22? As Sutton has commented,³⁹

"What developing countries must have from trading blocs such as the EEC is guaranteed access to their markets to sell their goods, combined with commodity agreements and buffer stocks to help stabilize the prices of their exports and thus enable them to plan on the basis of predictable foreign exchange earnings."

³⁸ Idem. Article 173(3).

³⁹ The EEC and the Developing World — A Changing Relationship (1976), 23.

It appears that just as efforts made during the Yaoundé regime failed to find a lasting solution to the problem of export earnings instability, so STABEX, although an improvement, is equally incapable of providing a lasting solution.

The Protocols

Sugar. Protocol 22 of the Act of Accession of Ireland, Denmark and the United Kingdom made special reference to sugar in the context of the EEC's purpose of safeguarding the interests of countries whose economies depend, to a considerable extent, on the export of primary products. It noted;⁴⁰

"The question of sugar will be settled within this framework, bearing in mind with regard to the exports of sugar the importance of this product for the economies of several of these countries and of the Commonwealth countries in particular."

Specific reference to sugar was necessitated by the existence of the Commonwealth Sugar Agreement (CSA). This agreement, signed in 1951, guaranteed access to the British market at a guaranteed price, generally above world prices. By virtue of Protocol 17 of the Act of Accession the CSA would expire on 28 February 1975.⁴¹ With the exception of Australia, all members of the Commonwealth Sugar Agreement were developing countries and, with the exception of India, all could theoretically have accepted the offer made to the Commonwealth in the first part of Protocol 22.

⁴⁰ Part III of Protocol 22.

⁴¹ Protocol 17 allowed members of the CSA to export the traditional quantities of sugar to the UK market. It did change the price received for this sugar.

The accession of the UK entailed a re-negotiation of the import arrangements for sugar because of the heavily import-dependent nature of the UK sugar market. The Commission memorandum on enlargement of the association, as previously noted, distinguished two options for the EEC; world commodity arrangements or export earnings stabilization. Although export earnings stabilization was chosen for the vast majority of products, sugar would constitute a special case, necessitating a slightly different solution. This solution was enshrined in Protocol 3 of the first Lomé Convention. It was a product agreement, limited in application to the ACP States and providing specific quantity and price guarantees. Article 1 of Protocol 3 reads,⁴²

"The Community undertakes for an indefinite period to purchase and import, at guaranteed prices, specific quantities of cane sugar, raw or white, which these States undertake to deliver to it."

Clearly, the arrangement is reciprocal, the EEC agrees to purchase and import specific quantities delivered to it by the ACP States. The undertaking to import specific quantities indicates that the arrangement is between the EEC and each ACP State rather than with the ACP States collectively.

The quantities of sugar benefitting from this arrangement amount to 1.3 million tonnes, a decrease of half a million tonnes from the agreed quantities under the Commonwealth Sugar Agreement. Article 3(2) of Protocol 3 states that, subject to the provisions of Article 7, the quantities allocated cannot be reduced without the consent of the individual states concerned.⁴³ The 1.3 million tonnes of sugar referred to in Article 3 is marketed on the EEC market at prices freely negotiated between buyers and sellers. EEC intervention in this process is limited to an undertaking to

⁴² OJ 1975 L 25/1, 114.

⁴³ *Idem.*

purchase at the guaranteed price quantities of sugar which cannot be marketed in the EEC at a price equivalent to or greater than the guaranteed price.⁴⁴ The price received by ACP sugar exporters is annually negotiated between the EEC and the ACP States and should be "within the price range obtaining in the EEC".⁴⁵

The obligations imposed on the EEC are matched by the obligation of the ACP States to deliver the agreed quantities in each delivery period. Should an ACP State fail to deliver its agreed quantity, Article 7 may come into effect. It provides that if for reasons of force majeure an ACP State is unable to deliver its full agreed quantity, the Commission shall allow an additional period for delivery, if the ACP State so requests. If no request is made, the shortfall shall be re-allocated for delivery during the delivery period in question, thereby maintaining imports of sugar at the level established by the Protocol. However, the level may decline. Article 7(3) and (4) state,⁴⁶

"(3) If, during any delivery period, a sugar exporting ACP State fails to deliver its agreed quantity in full for reasons other than force majeure, that quantity shall be reduced in respect of each subsequent delivery period by the undelivered quantity.

(4) It may be decided by the Commission that in respect of subsequent delivery periods, the undelivered quantity shall be re-allocated between the other states which are referred to in Article 3. Such re-allocation shall be made in consultation with the States concerned."

The discretion given to the Commission has been exercised. For example, Uganda's quota of 5000 tonnes was reduced to 409

⁴⁴ Ibid, 115. Article 5(3) of the Protocol.

⁴⁵ Idem. Article 5(4) of the Protocol.

⁴⁶ Idem. *European Sugar Policy*, 77.

tonnes, Kenya's quota from 5000 tonnes to 93 tonnes and Congo's quota from 10,000 tonnes to 4810 tonnes. Despite the reductions the level of ACP quotas imports remain constant around 1.3 million tonnes. This is due to the accession of other States to the Sugar Protocol as the number of States adhering to the Convention has increased.⁴⁷ The obligation of the EEC to import this amount of sugar remains because of two provisions of the Protocol. Firstly, the indefinite nature of the Protocol, and secondly, the implementation of the Protocol takes place within the framework of the EEC's sugar COM, but without prejudice to the EEC's basic commitment.

The Sugar Protocol is an extremely valuable concession to sugar exporting countries. Although the quotas in no case exceed 60% of any ACP States domestic production, the economic benefits of selling to the EEC market, with its high guaranteed price, far exceed those of selling to the world market, with its generally depressed price. However, Protocol has been criticised, by the ACP who question its implementation and by those people in the EEC who see it as a form of aid. The economics of the Protocol have been called into question, as one commentator noted,⁴⁸

"Not only does the European Community have to subsidize the sales of its own surplus production on the world market it is also bound, contractually to import a further 1.3 million tonnes per annum to swell its already large surpluses. The whole operation makes even less economic sense considering that the EEC re-exports refined sugar to ACP States."

⁴⁷ The Protocol had 13 signatories, in 1986 18 ACP States benefitted from its provisions.

⁴⁸ Terlinden European Sugar Policy, 77.

Despite the criticisms of the Sugar Protocol, it is an important innovation in the Lomé relationship. Another facet of the 'new model' established by the Lomé Convention.

Rum and Bananas The accession of the UK also necessitated special arrangements in respect of traditional imports of rum from the Commonwealth. Arrangements were originally laid down in Protocol 7 of the first Lomé Convention and are currently to be found in Protocol 5 of the third Lomé Convention. Article 1 of of this Protocol provides,⁴⁹

"Until the entry into force of a common organization of the markets in spirits, [rum] originating in the ACP States shall be imported duty free into the Community under conditions such as to permit the development of traditional trade flows between the ACP States and the Community and between the member States."

The quantities allowed to be imported are fixed each year on the basis of the largest annual quantities imported into the EEC from the ACP States in the last three years. Allowance is made for an annual growth rate of 37% for the UK market and 27% for all other member State markets. The annual quota is set at 170,000 hectolitres of pure alcohol but may be increased if this hampers the development of traditional trade flows.⁵⁰ Provision is also made in the Protocol for measures of trade promotion to encourage the expansion of sales in non-traditional markets.⁵¹

Protocol 5 guarantees to rum-exporting ACP States, the maintenance of traditional trade flows and the possibility of expansion into new markets. Protocol 4 of the third Lomé

⁴⁹ Courier No.89, 111.

⁵⁰ Council Reg.488/85. OJ 1985 L 61/22.

⁵¹ Article 3 of the Protocol.

Convention on bananas,⁵² offers similar guarantees. However, in this product area, the ACP States are not so advantaged. The reason for this stems from the 1957 Rome Treaty, more specifically, the Protocol on the tariff quota for imports of bananas. This protocol allows the Federal Republic of Germany to enjoy an annual duty-free tariff quota for the import of bananas. The quota was determined by reference to German imports of bananas in 1956 (290,000 tons), each period of the transitional phrase required a different percentage of the 1956 quantity. In no case should the quota fall below 75% of the 1956 quantity of imported bananas.⁵³ A declaration attached to the Protocol noted the readiness of Germany to support measures which would lead to the increase of banana imports from associated overseas countries and territories. A similar declaration was appended to the second Yaoundé Convention.⁵⁴

The major source of these imports are the countries of Latin America and not the Associates, thereby denying potential market gains to the ACP. In the early 1970's, it was suggested that the EEC introduce a preference for banana imports from the associated countries. This would be achieved by the introduction of a levy, As allied measures, the German protocol would be dropped and the CCT on bananas would be reduced. The proposal was rejected.⁵⁵ Against this background, the provisions of the Lomé banana protocol are predictable. The objectives are to,⁵⁶

52 Idem.

53 Provision 1 of the Protocol.

54 JO 1970 L 282/1, 32.

55 See Courier No.78, Dossier 64, 79.

56 Op cit n49.

" ... improv[e] the conditions under which the ACP States' bananas are produced and marketed and of continuing the advantages enjoyed by traditional suppliers ... and agree that appropriate measures shall be taken for their implementation."

Article 1 of the Protocol guarantees that no ACP State, as regards access to traditional markets and advantages, be placed in a less favourable position than in the past.⁵⁷ The appropriate measures referred to in the Preamble of the Protocol are production improvements, quality enhancement, internal transport and storage facilities, marketing and trade promotion measures. Despite these measures, the ACP States have only a 1% of the largest banana market in the EEC — the German market. ACP bananas are simply not competitive.⁵⁸

Each of the Protocols discussed above seeks to preserve traditional trade flows. Only the rum protocol positively provides for an expansion of exports. The EEC is seeking ways of limiting sugar imports from the ACP States and ACP bananas face almost insurmountable problems on the German market. One must question the EEC's purpose of safeguarding the interests of the economies of ACP States dependent on exports of primary products. As implemented, this seems to safeguard European interests rather than the promotion of ACP export earnings and development.

⁵⁷ Op cit n2, 32. Article 139(3)(d) Lomé III. See also Annex XVI: Lomé III.

⁵⁸ Ibid, 33-34. Articles 139-143 Lomé III and Annex XVII, Joint Declaration on Article 140 containing the text of the Joint Declaration by the Council of Ministers ... concerning safeguard measures.

⁵⁷ Idem. Article 139(3).

⁵⁸ Op cit n56, 92. (d) Lomé III.

Other Provisions

Some other provisions of the Conventions are also of interest. For example, the agricultural trade concessions given by the EEC may be reduced if a new common organization of the market is introduced or if an existing common organization is modified. In such cases, the EEC undertakes to grant the ACP States a preference, as against third countries enjoying most favoured nation treatment.⁵⁹ This safeguard is also accompanied by a more general clause which allows the EEC to take safeguard measures, should the application of the Convention's trade provisions lead to serious disturbances in the economy of the EEC or of one or more of the member States.⁶⁰ The ability to invoke safeguard measures is, however, circumscribed. Such measures are not to be used for protectionist purposes and the measures adopted are restricted to those which least disturb the proper functioning of the Convention.⁶¹

Prior consultations should take place between the parties concerning the application of the safeguard measures. Consultations should also occur whenever the EEC intends to conclude a preferential agreement with third States, if the ACP request them.⁶² This provision, which establishes the ACP at the top of the EEC's hierarchy of trade relations, can be used to ensure that these preferential agreements do not result in a level of concessions greater than those accorded to the ACP. The special position of the ACP in relation to all other countries having

⁵⁹ Op cit n2, 32. Article 130(2)(d) Lomé III. See also Annex XVI: Lomé III.

⁶⁰ Ibid, 33-34. Articles 139-143 Lomé III and Annex XVII, Joint Declaration on Article 140 containing the text of the Joint Declaration by the Council of Ministers ... concerning safeguard measures.

⁶¹ Idem. Article 139(3).

⁶² Article 130(2)(d) Lomé III.

agreements with the EEC is further reinforced by the rules of origin. Rules of origin are those rules which govern the eligibility of products to receive the benefits of the preferential arrangements, thereby ensuring that no third country gains preferential access at the expense of the ACP States.⁶³ So only genuine ACP products benefit from the arrangements. Problems arise when the goods produced incorporate some imported materials. Although origin rules are not a problem in relation to primary products, they may well be in relation to processed agricultural products. The origin rules used by the EEC are based on the concept of substantial transformation, that is, the particular product has been processed to such an extent as to transform its specific characteristics to a substantial degree.

The use of the concept of substantial transformation allows for the compilation of two lists; List A, although there has been a change of tariff heading insufficient transformation has taken place; and List B, the converse of A. The complications inherent in rules of origin are further aggravated by the introduction of two further criteria, a maximum imported material criterion and a process criterion requiring the operation to be performed in the ACP States. The effect of the rules of origin contained in the Lomé Convention, the most liberal rules used by the EEC, means that the level of manufactured exports from the ACP is low as is the level of processed agricultural product exports. The rules, their complexity and high process criterion, acts as a positive disincentive to the development efforts of the ACP.⁶⁴ Incentives to develop are on offer to the ACP States through the operation of the European Development Fund.

⁶³ Protocol No.1 Lomé III.

⁶⁴ See McQueen "Lomé and the Protective Effect of Rules of Origin" (1982) 16 JWTL 119.

Previously, it was noted that one of the major reasons why countries acceded, and adhered, to the Yaoundé Conventions was the level of aid given by the EEC. It has been claimed that the relationship between the EEC and the ACP is still an aid relationship.⁶⁵ Generally speaking, the aims of financial and technical co-operation under the Lomé regime does not differ significantly from those of the Yaoundé regime, the aim is still economic development. Although various other objectives have been added, the purpose remains the same. All that has changed are the methods. Perhaps this concentration on the aid relationship is a reflection of the past "successes" of the Yaoundé relationship. All the EEC may be trying to achieve is a solidification and embellishment of the past, to ensure the continued adherence of the ACP to the principles established in Part IV of the Treaty of Rome.

Conclusion

This chapter has analysed some of the features of the Lomé relationship, the trade provisions, STABEX, and the product protocols. Comparing these features with those of the Yaoundé regime it is possible to note both continuity and change in the relationship between the EEC and the ACP. The focus remains on development, although each Convention may reflect a different aspect of the problem. For example, Lomé II concentrated on the problems of agricultural development. Lomé III marks a turning point in the relationship, for the first time the parties have elaborated the principles of co-operation, the *acquis-Lomé*.

The next chapter will critically evaluate the provisions elaborated in this one. Analysing the relationship between the EEC and the ACP as it enters a new decade opinions on it are bound to diverge.

⁶⁵ See Jones D. Europe's Chosen Few (Policy and Practice of the EEC Aid Programme)

Does it establish a new model for relations between developed and developing nations? Does it perpetrate the relationship of economic colonialism established by Part IV of the Treaty of Rome? Does it allow the ACP to achieve the level of development they aspire to? Does it impede this process? One must recognise that the Convention includes innovations which, to some extent meet the demands of developing countries for a new international economic order. However, one must also acknowledge the failings of the relationship and attempt to suggest improvements which will help Lomé achieve its goals.

The mechanisms developed to achieve this are the provisions on trade co-operation. These provisions allow for the duty free entry of ACP products, with the exception of those products subject to the CAP. These provisions aim to achieve a 'better balance in the trade of the Contracting Parties'.

The interpretation of this objective has been the subject of dispute between the EEC and the ACP. On the one hand, the ACP argue for a dynamic interpretation of this provision. The trade provisions should be utilised in such a way as to promote the establishment and economic viability of manufacturing and processing industries. The development of these industries, with the extensive nature of the trade preferences given, would allow the objectives of the Convention to be achieved: the economic development of the ACP. On the other hand, the EEC interpretation of the provision is an essentially static interpretation. The provisions of the Convention should be used to ensure the continued satisfaction of the demands of European industry and consumers. An analysis of the trade impact of the

¹ 'Lomé: Market Access and Industrial Co-operation' (1979) 13 JWIL 181.

CHAPTER 3: BEYOND LOMÉ — AN EVALUATION OF THE LINK.

The development of trade

Speaking of the negotiations for a successor to Lomé I, Helleiner stated,¹

"The real test of the value of a renegotiated Lomé Convention must be whether it assists the ACP countries, singly or collectively, to upgrade and diversify their exports and thus improve their economic structures."

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¹ "Lomé: Market Access and Industrial Co-operation" (1979) 13 JWTL 181.

Lomé Convention indicates that the latter interpretation of the 'better trade balance' objective is the true interpretation.

A major study of the development of ACP-EEC trade (the Kiel study) indicates a declining market share for ACP States; in EEC non-oil imports from developing countries; in EEC imports from developing countries of semi-manufactures and manufactures; and finally, in EEC agricultural imports from developing countries.² The study goes on to indicate that various EEC trade policy-induced barriers to ACP export growth and export diversification exist.³ The first of these is;

(i) product coverage in ACP trade preferences and preference redundancy.

The EEC is fond of pointing out that 99.5% of ACP exports enter the EEC duty free. However, as Hewitt and Stevens indicate, 'this figure says more about the nature of current ACP exports than it does about the value of Lomé Concessions'.⁴ As the Kiel study indicates, about 60% of total ACP exports to the EEC was accounted for by 20 commodities. These commodities are freely importable into the EEC from any source.⁵ This raises two further points, (i) the continued commodity concentration of ACP exports and (ii) preference redundancy. As the study noted,⁶

² "Effects and Prospects of EEC-ACP Trade and Trade Policy Relations." (the Kiel Study) see the Courier No.98, 61-69.

³ Ibid, 77.

⁴ "The Second Lomé Convention" in ed Stevens C The EEC and the third world: A Survey Vol.1.

⁵ Op cit n2, 77. See also Twitchett C.C. "Patterns of ACP/EEC Trade." in ed Long The Political Economy of EEC Relations with ACP States, 145.

⁶ Op cit n2, 77.

"An important question which arises in this connection is whether the preferences granted to the imports from the ACP countries are necessary to promote their exports in the EEC or whether they are redundant in this respect."

If 60% of ACP exports receive no preferences over third countries, a case of preference redundancy is established. However, 25% of ACP exports to the EEC do benefit from a level of preferences as against third country suppliers.⁷ The preferences granted on this percentage of exports may either make the higher priced ACP product equal in price to those of non-ACP suppliers or it may make it cheaper. In both of these cases, the preferences result in a distortion of competitive forces, the lower priced non-ACP product losing out to the higher priced, but preference receiving, ACP product. Given the fact that the ACP share of the EEC market has declined, it seems certain that the preferences given to the ACP are insufficient to allow them to compete with non-ACP suppliers.

Some 4% of ACP exports were affected by the operation of the CAP, and only seven out of twenty-five of the most important ACP exports enjoyed a tariff advantage as against third countries.⁸ Combining these statistics with the fact that the ACP are major exporters of primary products (and especially foodstuffs), the conclusion is that the CAP serves to restrict the export growth of the ACP. This fact/conclusion has been recognised that the European Parliament in their analysis of the future of the Lomé Convention. The sub-report on trade and market recognised that

⁷ Idem.

⁸ Twitchett op cit n5, 157-162.

the consequences of agricultural tariff preferences were not satisfactory. The reasons given include:⁹

- products granted preferential status are totally absent or represented only in small quantities in the range of goods on offer;
- EEC trade measures have considerably limited the effect of preferences. These measures include, in particular, the maintenance of the reference price system for many varieties of fruit and vegetables; the extension of preferences for Mediterranean products; the general safeguard clause; and the regulation on origin with regard to vegetable oils; and finally,
- the existence of special marketing conditions limiting the effectiveness of tariff preferences.

These reasons indicate that tariff preferences by themselves are insufficient to promote the development of ACP-EEC trade. This conclusion was acknowledged by the parties during the negotiation of Lomé II. Hence, the emphasis given in that Convention to agricultural development. Another factor emerges from the list of reasons given above, that is, to ensure a genuine level of preferences for the ACP would require not only a change to the preferential regime governing ACP products but also the Mediterranean agreements, the GSP and, more importantly, the internal mechanisms of the CAP. To hope for such an extensive amendment of the delicate balance of internal and external policies, in an effort to give 'real' preferences to ACP agricultural exports, is unrealistic. Another method of supporting agricultural exports will have to be found. This conclusion is strengthened when on consideration of the second EEC trade policy-induced barrier identified by the Kiel Study.

⁹ EP Doc 1-605/83 Report on the context of the future ACP-EEC Convention to follow Lomé II. Rapporteur U.Irmer, Sub report on trade Rapporteur K.Wawrzik, 130.

(ii) The erosion of preference margins.

This erosion arises from two sources, the Generalized System of Preferences and the GATT. In relation to the GSP, the erosion issue centres on tropical agricultural products and their processing. As the Kiel study acknowledges, the major source of competition for the ACP comes from the ASEAN countries.¹⁰ Analysis of the trade performance of these two blocs in relation to tropical agricultural products indicates that the GSP has 'dismantled' ACP preference margin. This dismantling has occurred despite consultations between the EEC and the ACP before the introduction of the annual GSP regulation. GATT induced tariff cuts, especially on items such as tea, coffee and cocoa beans, have also contributed to a certain amount of preference erosion. The value of preferences is, therefore, declining. As Wall acknowledges,¹¹

"... in the EC context, the word preference had lost much of its original meaning by 1972. The increasing inability of the Community (a) to offer trade preference for semi-manufactured and manufactured goods; (b) to offer more than temporary preferences for a small range of tropical products and (c) to offer any significant benefits at all for products covered by the CAP, meant that the only meaningful form of compensation that any Convention could offer would have to take the form of aid, of one description or another."

Summarising the discussion so far, it appears that the EEC market accessibility of ACP agricultural exports are affected by a number of factors; the erosion/redundancy of tariff preferences and the operation of the CAP. In addition to these EEC-induced factors a number of exogenous barriers and ACP policy-induced barriers to

¹⁰ See Chapter 4 of Part III of this paper.

¹¹ Op cit n2, 79. The EEC's Lomé Convention: Stabex and Third World Aspirations (1970) 7.

export growth and export diversification exist. Lomé III, recognising the existence of these exogenous barriers, has attempted to provide a means towards their solution. Note, for example, the provisions on drought and desertification;¹² transport and communication;¹³ and plant and animal diseases.¹⁴ The ACP policy-induced barriers cannot be overcome through the Convention, as it recognises the right of each state to determine its own political, social, cultural and economic policy options.¹⁵

The immense scale of the problem does not mean a solution cannot, or will not, be found. What is needed are guarantees of market access, commodity agreements and buffer stocks to enable planning on the basis of predictable foreign exchange earnings. Perhaps, the parties to the Convention should conclude regional commodity arrangements. The possibility of such arrangements has already been canvassed. The 1971 Commission Memorandum on Development Co-operation recognised the desirability of concluding regional commodity arrangements should international agreements fail to be concluded within a reasonable period of time.¹⁶ The means to achieve regional commodity arrangements can be found in the Conventions themselves, for example Article 44 of Lomé III recognises the determination of the Contracting Parties to co-operate on agricultural commodities.¹⁷ The necessary ingredients of these arrangements would be:

¹² Chapter 2 of Title I (Part two) Lomé III. The Courier no.89, 17.

¹³ Title V (Part two) Lomé III *ibid*, 25.

¹⁴ Chapter I of Title I (Part two) Lomé III *ibid*, 15.

¹⁵ Article 3 Lomé III *ibid*, 10.

¹⁶ EC Bull Supp 5/71.

¹⁷ Article 44-49 Lomé III *op cit* n12, 18-19.

- a mechanism to reduce excessive price fluctuations. This could be achieved by establishing a minimum purchase price for ACP products on the EEC market;
- a mechanism to reduce quantity fluctuation. The obvious method to achieve this would be the creation of suitable stocking arrangement on either a national, regional or inter-regional level (see Articles 26, 29, 45 Lomé III);¹⁸
- a mechanism to reduce quality variations. This could be achieved through the Technical Centre for Agricultural and Rural Co-operation (Article 37 Lomé III¹⁹). Special emphasis should be given to the effective control of disease, pests and other factors causing a deterioration in either quality or quantity.

Further ancillary measures could include provisions to promote the processing and the marketing of the commodities and the diversification of production to lessen the impact of commodity dependence.

The regional commodity arrangement would be aimed at securing market access to EEC markets and, more importantly, the upgrading and diversifying ACP exports. The overall purpose of the arrangements would be the improvement of the ACP's economic structures. Access to the EEC market could be achieved by minimum quantity agreements, similar to those contained in the Sugar Protocol. The necessary financial requirements to assist the objectives of the arrangement could be met by the European Development Fund. As the 1971 Commission memorandum recognised, the regional commodity arrangement would be temporary pending the conclusion of international commodity

¹⁸ Ibid, 15 and 18.

¹⁹ Ibid, 17.

arrangements, which have similar economic provisions.²⁰ This link with the international arena raises a problem concerning the range of commodities which would be suitable for both regional and international commodity agreements. Products such as coffee, cocoa, sugar and tea are amenable to international agreements. However, the ACP States export other products for which an international agreement is a remote possibility (e.g. fruit and vegetables). In the case of the latter product the EEC and the ACP could conclude a regional commodity arrangement. As an alternative to a commodity arrangement, the EEC could agree to foster the aims of the numerous producer associations for products not amenable market regulation. As an example, the EEC could agree to promote the objectives of the African Groundnut Council (AGC). The preamble to the AGC Convention states the desire of the Council,²¹

"To contribute by means of adequate action to the stabilization of prices of groundnuts in the world market, at a remunerative level"

EEC action could be directed towards the ancillary measures of regional commodity arrangements; the development of processing and marketing and the diversification of the economies of the ACP States.

The proposal made above (the conclusion of regional commodity arrangements or alternatively, support for the objectives of producer associations) seeks to guarantee the ACP a level of market access to the EEC market. It recognises the limitations of preferences, especially their inability to generate trade. By promoting measures which will have the effect of generating trade, the Lomé Conventions will enhance the development prospects of the ACP. The trade generated by regional commodity

²⁰ Op cit n16.

²¹ The Courier No.86, 80.

agreements will not be solely in the direction of the EEC. The nature of the CAP suggests that the scope for further trade concessions is limited, for this reason both proposals seek to promote ACP trade with non-EEC states. While recognising that this will weaken the link established in 1957, it is a reflection of the nature of the problems facing the ACP. Europe cannot hope to solve these problems alone. The co-operation of all countries is necessary to achieve the economic development of the ACP and other developing states.

STABEX, an analysis for an innovation

The one feature of the Lomé Conventions which has attracted the greatest analysis and criticism is the scheme for the stabilization of export earnings. The criticisms range from the allegation that the scheme discriminates against other developing countries,²² to claims that the scheme is a positive disincentive to the development of the ACP States.²³ It is undoubtedly true that in the absence of a global scheme similar to STABEX, the ACP States have an advantage over other developing countries, an advantage which is further accentuated by their preferential access to the EEC market. However, various internal problems with the operation of the STABEX scheme limits the extent of these advantages and hence, the scope of the discrimination.

The first of these internal problems is the product coverage of primary products. It has been stated that the nature of the product coverage reveals the true purpose of the scheme; it is an attempt by the EEC to achieve security of supply for certain

²² See Moss The Lomé Conventions and their implications for the US (1982) ch 4. The Stabex system: Operation, Analysis and Critique.

²³ See Sutton The EEC and the Developing World. A Changing Relationship (1976) 18-25.

essential commodities.²⁴ This impression is strengthened when one considers the negotiation and operation of Sysmin, a system similar to STABEX but relating only to minerals. If a percentage fall of 10% or more occurs in the capacity of an ACP State to produce or export minerals or in export earnings and this fall seriously compromises the profitability of an otherwise viable and economic line of production, the ACP State concerned will be entitled to a Sysmin transfer. Unlike STABEX, the system is not connected to the development needs of the ACP but with the economic survival of the mining industry in the ACP States. As such, the scheme allows two charges to be made against the EEC. These have been identified by Rajana as,²⁵

- (i) the subordination of the Lomé arrangement to the EEC general scheme for alleviating its own energy and mineral needs; and
- (ii) the reinforcement of the existing production structures of the ACP States and a deepening of their external dependence.

These charges, although relating to Sysmin, are equally applicable to STABEX.

By concentrating on primary products, STABEX operates as a disincentive not only to the development of processing industries and thus of industrialization but also to the development of food crops instead of export crops.²⁶ In recognition of this, Lomé III includes provisions to achieve food security through agricultural co-operation, especially in the area of food strategies.²⁷ It is in

²⁴ See Persaud "Export Earnings from Commodities: Export Earnings Stabilization in the Lomé Convention." in ed Von Geusau The Lomé Convention and the NIEQ.

²⁵ "Europe and the Third World: A Critical Appraisal of Lomé II" (1980) 3 JEI 197, 205. See Kibola "Stabex and Lomé III", (1984) 18 JWTL 32.

²⁶ Sutton op cit n23, 18.

²⁷ Op cit n12, 16. Article 35 Lomé III.

this context that one must examine the requests of the ACP for the purchase of available agricultural surpluses from the EEC, in addition to their food aid requirements.

The main reason for the limited product coverage of STABEX is the operation of the CAP. Two examples illustrate this point, tobacco and citrus fruit. In relation to the ACP request concerning the possible inclusion of tobacco in the STABEX system, the Commission's reply expressed the reluctance of the EEC to include it. The reasons given include the following,²⁸

"Such an extension would mean, in effect, granting outside the EEC, an automatic guarantee limited to the quantity of production from which EEC tobacco producers do not benefit."

The ACP request for the possible inclusion of some citrus fruits (grapefruits, oranges, tangerines and lemons) received a similar reply.²⁹ The solution to the problems of fluctuating export earnings in these two commodities could not be found in the context of STABEX. The solution would have to be in the form of tariff preferences accompanied by import calendars and/or tariff quotas.³⁰

The reluctance of the EEC to extend STABEX to cover products subject to the CAP is understandable. However, it does confirm the role of the ACP as traditional suppliers of certain primary products. Thus STABEX offers no incentive to develop other lines of production and if other markets are cultivated, this may result in the loss of a STABEX transfer. As noted during the description of the STABEX system a transfer may be denied if either economic

²⁸ COM (81) 674, Possible inclusion of tobacco in the Stabex system, 1.

²⁹ COM (81) 656.

³⁰ See Council Reg. 486/85 OJ 1985 L 61/4. Articles 16 and 17 (tobacco and Article 13 (fruit).

conditions do not justify it, or the fall in export earnings is the result of a trade policy decision adversely affecting exports to the EEC. A decision to undertake further processing and thus, a decline in the level of exports to the EEC or, a decision to send exports to markets other than the EEC, may, in the exercise of the Commission's discretion, be considered as an adverse trade policy decision. The exercise of the Commission's discretion, itself a subject of criticism, may be negated if the fall in exports to the EEC is a result of increased exports between the ACP States.³¹ In such cases, STABEX may be applied, if so, it results in inter-ACP transfers. Alternatively, the system may still apply to exports to all destinations, if the Council of Ministers so decides, taking into account the fact that the ACP to be granted a derogation does not send the bulk of its exports to the EEC.³²

The limited product coverage of STABEX serves as a disincentive to the process of development, thereby nullifying one of the aims of the scheme. The process of development, occurring through the development of processing and manufacturing industries, is also stultified by the dependence threshold, the percentage of an ACP States' total earnings from merchandise exports. The reason for this is as follows, if an ACP State has one major product an attempt to diversify its export base could jeopardise the attainment of the dependence threshold for the one major product.³³ The thresholds which serve to actuate the system, when economic conditions justify it, are set at 6%, all shortfalls less than 6% do not activate the system. This may cause the loss

³¹ See Dolan "The Lomé Convention and Europe's Relationship with the Third World — A Critical Analysis". (1978) JEI 369.

³² Op cit n2, 35. Article 150(3) Lomé III.

³³ Wall The European Community's Lomé Convention: Stabex and Third World Aspirations, 11.

of substantial export earnings.³⁴ The inequities resulting from the thresholds was pointed out by the Court of Auditors,³⁵

"The same ACP State may receive a financial transfer for a STABEX product which slightly exceeds the dependence threshold, whereas for another STABEX product which greatly exceeds the same threshold the transfer is refused because the reduction in export earnings is only a small percentage below the reference level."

These inequities justify the need for a graduated system for triggering off transfers, so that those States who most need the transfers actually receive them (i.e. the less-diversified ACP States). The inequities of the threshold, as the Court of Auditors indicate, partly result from the reference level.³⁶ The fact that these levels are based on past export earnings has been a source of criticism.³⁷ The choice of nominal export earnings over the last four years frustrates the objectives of the scheme by stabilizing export earnings at an inadequate level. No account is taken of either movement in import purchasing power, or the effects of inflation.³⁸ If real export earnings, around a moving average centred on the year of the shortfall, were taken into account and provision made for indexing the price of primary exported products with manufactured imported products, the scheme would meet its objectives and promote economic development.

³⁴ See Kibola "Stabex and Lomé III." (1984) 18 JWTL 32. See also Hasenpflug "The Stabilization of Export Earnings in the Lomé Convention: A Model Case?" in ed Sauvart and Hasenpflug The NIEO (1977).

³⁵ COM (80) 211 Court of Auditors. Special Report on the operation of Stabex and The Commissions comment on the Special Report, 12.

³⁶ Ibid, 7.

³⁷ See Persaud op cit n24, 85.

³⁸ See The Courier No.98, 87 for the Average Annual Inflation Rates in ACP Countries 1965-80.

Acceptance of this proposal by the EEC is doubtful, the level of funding required for the scheme would increase and concern over the possibility of inflation resulting from indexation are the reasons for this belief. After all, the scheme was not supposed to interfere with the free play of market forces.

The major problem faced by the scheme is an insufficiency of funds. The difficulties encountered in 1980 and 1981 are illustrative of this problem.³⁹ In 1980, for the first time since its inception, the amount of admissible requests exceeded the funds available. The situation repeated itself on a much greater scale in 1981. The factors which played a role in this crisis were the changes made to STABEX by Lomé II (lowering of thresholds, greater product coverage, globalization, and provision for inter-ACP transfers) and a sharp fall in the prices of commodities covered by the system. In 1980, using that years instalment, the balance from Lomé I and the maximum advance on the 1981 year, STABEX could only achieve an actual cover rate of 52.8%.⁴⁰ The figure for 1981 was 42.8%.⁴¹ The system was beginning to lose credibility as it was unable to cope with the decline in the competitive position of ACP products. However, the system was able to operate within its parameters, even though all transfers were not fully met. Moreover, the bad years of 1980 and 1981 were reflected in the reference levels for the remaining years of Lomé II, thereby reducing those levels and the transfers to be paid in subsequent years. The events of 1980 and 1981 led many to question the viability/necessity of STABEX, as Hewitt noted,⁴²

³⁹ The Courier No.79. Dossier on Stabex. See also COM (82) 150. Application of the system for the stabilization of export earnings 1980-81.

⁴⁰ The Courier No.79, 68.

⁴¹ Idem.

⁴² "The Lomé Convention: Entering a Second Decade." (1985) 23 JCMS 95, 112.

" ... if the APC's market share has fallen for most STABEX commodities, it makes little economic sense for the Community 'to compensate' ACP governments for losses in their market share (whether this arises from production difficulties or poor marketing) when other developing country commodity exporters are performing better without the benefits of STABEX and the other privileges accorded under Lomé."

Perhaps, STABEX is a disguised form of aid! Consider the fact that the ACP do not accept any direct link between the transfer and the sector experiencing difficulties, the micro-economic effects are not as strong as the macro-economic effects of a transfer. Yet STABEX does not operate well as "an instrument of macro-economic stabilization".⁴³ Clearly, a choice will have to be made as efforts to unite the macro and micro-economic effects of STABEX transfer fails to achieve the objectives of the system. If the aim is overall economic development, a macro-economic structure for STABEX should be chosen. If the aim is to develop production in the affected sector a micro-economic structure would be preferred.

In its report on the future of the Lomé link, in relation to STABEX the European Parliament recommended that it be fundamentally reformed. To maintain it as a tool for development, it proposed that,⁴⁴

- "—all processing stages for agricultural and other raw materials are covered by the system;
- a basis for calculation is established which allows for trade between the ACP countries and exports to markets other than the Community for specific regions and products;
- the diversification of existing single crop economics is not restricted;

⁴³ Faber "The Economics of Stabex". (1984) 18 JWTL 52.

⁴⁴ Op cit n9 para 54 of the proposed resolution.

- the growing of food crops for internal consumption is not restricted; and
- where STABEX appropriations are used, agreement is obtained and monitoring arrangements implemented to determine whether the appropriation should be invested in rationalization of the economic activity concerned or for purposes of diversification, in particular, to secure self supply in food stuffs."

The implementation of these recommendations would involve substantial alterations to the product coverage of the system, the thresholds and reference levels and increased resources. As the last of these recommendations indicate, the European Parliament was concerned about the efficacy of the transfers. They seemed to have chosen a micro-economic structure for STABEX, transfers being used for rationalization or diversification, instead of a macro-economic structure, to aid the process of development. The recommendations were not acted upon. The STABEX system provided for in Lomé III is not fundamentally different from that of Lomé II. The future of the system may be in doubt as disagreements about the system exist between the member States. On the one hand, France wishes the scheme to continue in expanded form with transfers channelled through national product stabilization funds and with control over domestic pricing policy.⁴⁵ On the other hand, the UK feels the scheme is of little effect, duplicating the IMF scheme and has the EEC fulfilling a role which the IMF could better fulfil.⁴⁶ The outcome of this debate is either an improved STABEX or no STABEX. The nature of the IMF scheme, the Compensatory Financing Facility, suggests that STABEX will survive.

⁴⁵ See Hewitt A "Stabex: Analysing the Effectiveness of an Innovation" in ed Stevesn The EEC and the Third World: A Survey Vol.III (1985).

⁴⁶ Idem.

The IMF Compensatory Financing Facility (CFF) and STABEX differ substantially in scope, objectives and modes of operation. Goreaux identifies the following differences,⁴⁷

- CFF covers earnings from all merchandise exports to all destinations and is open to a wider group of countries;
- the amount of the transfer under CFF cannot exceed the net shortfall in earnings from all merchandise exports;
- the purpose of CFF is to provide assistance to members with an overall balance of payments deficit arising from the export shortfall;
- CFF can only be used if the member has a balance of payments need and if it co-operates with the IMF to find solutions to its balance of payment difficulties;
- CFF relates to shortfall in any period of 12 consecutive months. The shortfall is calculated as the five year average centred on the shortfall year;
- drawings from CFF are not subject to any thresholds although a limit is imposed on the amount transferred;
- interest is charged on all loans and they are repayable by all members within a set time period."

The possibility of changes to STABEX to make it more like the CFF, would be an enormous step for the EEC. A globalized scheme would need wider product coverage, abolition of thresholds, calculations in terms of real purchasing power, longer repayment periods and vastly increased financial resources. Such a dramatic

⁴⁷ "The IMF's Compensatory Financing Facility" IMF Staff Paper No.34 (1980) 80-84. See also Finger and Derosa "The Compensatory Financing Facility and Export Instability" (1980) 14 JWTL 14.

change in the nature of STABEX could not be envisaged.⁴⁸ However, some of the methods used in the CFF could be used in STABEX. The most important adaptation would be the use of the five year average to determine the net shortfall. This adaptation would introduce a degree of flexibility which STABEX currently does not possess.

Other changes to the nature of STABEX are more problematic. An expansion of product coverage seems unlikely, the thresholds would remain, although a graduated trigger threshold system would resolve some of the inequities of the present system. The possibility of increased financial resources is also doubtful. Such increased resources may not be needed if the proposals made in the first section of this chapter are implemented. A system of regional commodity arrangements which would achieve price and quantity stabilisation would obviate the need for STABEX although a need would still remain. Equally, fostering the aim of producer associations would also reduce the need for STABEX. The example given earlier was of the African Groundnuts Council, encouragement of their objectives would reduce the need for transfers. (Transfer for groundnuts and groundnut oil accounted for 42% of all STABEX transfers in the years 1975-80.⁴⁹)

If the proposals were acted upon, a decrease in the level of STABEX transfer could result as fluctuations of price and quantities are mollified. As a result of the implementation of regional commodity arrangements or measures to support producer associations the objectives of STABEX could be satisfied.

⁴⁸ See Persaud "Export Earnings Stabilization in the ACP/EEC Convention" in ed Long F. The Political Economy of EEC Relations with ACP States 91-106 and Hasenpflug op cit n34 and Cuddy J. "Compensatory Financing in the North-South Dialogue — The IMF and Stabex Schemes" (1979) 13 JWTL 66. Each of these articles discusses the possibility of a Globalised Stabex.

⁴⁹ The Annex: Statistics and Graphs, The Courier No.79, 77-82.

This system of regional commodity arrangements backed up by STABEX would put an end to criticisms of STABEX, such as,⁵⁰

"Stabex does not directly address the many problems to which primary product exporters are exposed other than short-term foreign exchange shortages. Even here the approach is patchwork. It is doubtful if the final impact on the ACP so far has been significant. Small, infrequent financial transfers are of dubious lasting effect."

Sugar, problems with the Protocol

A 1975 study of the effects of the Lomé Convention on the World's Cane Sugar Producers, noted,⁵¹

"One suspicion is that the Lomé price provisions may be less generously interpreted than those of the CSA because of the constant pressure to reduce Community agricultural budget costs and the fact that sugar is not one of the Community's deficit commodities."

This suspicion proved well grounded. Despite the fact that the Sugar Protocol provides for the guaranteed price to be negotiated annually, the price is usually fixed automatically at the level of the EEC's intervention price. The ACP constantly strive for genuine negotiations, in which all relevant economic factors are taken into account.

One economic factor considered by the ACP to be relevant is ocean freight costs. A 1982 Commission document examined the problem of ocean freight costs, which according to the ACP, rendered equal prices for ACP and EEC sugar inequitable to ACP

⁵⁰ Moss op cit n22, 178.

⁵¹ Harris and Hagelberg "Effects on the Lomé Convention on the Worlds Sugar Cane Producers." (1975) 2 ODI Rev.2, 38.

exporters. The resulting proposal for a Council Declaration on the problem, while noting that transport costs were a permanent charge for ACP exporters, expressed the conclusion that the problem could not be alleviated within the framework of the Sugar Protocol.⁵² Given the requirements of Article 1(2) of the Protocol, that implementation be carried out within the framework of the COM for sugar, if the guaranteed price for ACP sugar were increased by a transport element, ACP sugar would have to be bought into intervention because it could not be freely marketed within the EEC. Moreover, a higher price for preferential ACP sugar would have political acceptability problems within the EEC. The Commission document stated the willingness of the EEC to co-operate with the ACP States in finding a solution to the problem but such co-operation would take place outside the framework of the Sugar Protocol.⁵³ Ocean freight costs were not, therefore, a relevant economic factor. As a Commission spokesman informed the ACP in 1982,⁵⁴

"the only relevant economic factor was the price that commercial purchasers are prepared to pay for sugar at any given moment"

Another economic factor which is not considered relevant in the process of price formation is the need for the ACP to achieve a return on their investments. This should be relevant considering that investments in ACP sugar production are carried out with the financial help and technical assistance of EEC firms and agencies.⁵⁵ The failure of the EEC to engage in genuine annual negotiations

52 COM (83) 243 ACP Sugar, the problem of ocean freight costs.

53 Ibid, 5 (Part 4 of a recommended Council Declaration).

54 The Courier No.75 Dossier-Sugar, 62.

55 COM (78) 623 Lack of proper co-ordination between the policies of the member States and the EC-Sugar.

was one of the 'violations of the Sugar Protocol' discussed by a special ACP Council of Ministers in 1985. The feeling of the participants was that no real negotiations had ever taken place on prices, the EEC simply "offered" the ACP a price which they could "take or leave".⁵⁶

In 1986 the ACP requested a special top-level meeting to discuss the fixing of the guaranteed prices, and the EEC reluctantly agreed.⁵⁷ The dispute over price related to the EEC offer of a 1.15% increase in the price of raw sugar (the state in which most ACP sugar is exported to the EEC) as against 1.3% increase for refined sugar from the EEC. The ACP wanted a 1.33% increase in the price for raw sugar. A compromise was finally reached at the ACP Council of Ministers meeting in Bridgetown. The nature of the compromise was that for sugar delivered between 1 July 1985 and 31 March 1986 a 1.15% increase was granted, whereas for sugar delivered between 1 April and 30 June 1986 the increase would be 1.33%. Although accepted by the ACP group, the compromise did not satisfy ACP producers. Yet, the price they receive on the EEC market is 10% greater than the international price.⁵⁸

Another aspect of the Protocol which has caused problems is the allocation of quantities. Annex XIII of Lomé I stated that requests from ACP States not specifically referred to in Protocol 3 to participate in the Protocol should be examined.⁵⁹ The request made by Zambia for admission to the Protocol is illustrative of the attitude of the EEC to the Protocol. The request was rejected, but the Commission left it open to other ACP States to reduce their

⁵⁶ The Courier No.90. Yellow Pages I.

⁵⁷ The Courier No.97. Yellow Pages I.

⁵⁸ Ibid, II.

⁵⁹ OJ 1975 L 25/1, 140.

own quotas if they wished Zambia to be admitted to the Protocol.⁶⁰ The rider to this option was that the reduction of quotas and the admission of Zambia should not result in the overall quantity of 1.3 million tonnes being exceeded. Although the number of ACP States benefitting from the Protocol has increased from 14 to 18, the overall quantity has not been exceeded. According to the Commission the present situation on the EEC and world markets preclude any increase in the level of quotas.⁶¹

Moreover, in the Commission's view, Protocol 22 of the Act of Accession was not intended to apply to countries which developed a capacity to export sugar after the Sugar Protocol entered into force.⁶² Clearly, the EEC is anxious to keep the level of preferential sugar imported at 1.3 million tonnes. Perhaps through the use of Article 7 and a failure to reallocate delivery shortfalls, the overall quota might even be reduced. The level of the quota at 1.3 million tonnes exceeds by .2 million tonnes what is considered to be the secure British market for ACP sugar. This ignores the fact that other member States use ACP sugar and the offer by Portugal to buy 0.3 million tonnes of ACP sugar on its accession to the EEC. The Commission opposed the Portuguese offer and suggested that the ACP only export 70,000 tonnes of sugar at world market prices.⁶³ Once again the CAP seems to be controlling the operation of the Lomé link. As one commentator has noted,⁶⁴

⁶⁰ See Terlinden European Sugar Policy (1985). Operation of the Sugar Protocol - Supplies for the EC or and for development.

⁶¹ See COM (83) 172, for the Commission discussion of this point.

⁶² Idem.

⁶³ The Courier No.90. Yellow Pages, III.

⁶⁴ Jackman "The Sugar Protocol. An ACP View." The Courier No.75, 57, 59.

"The idiosyncratic arithmetic of the [CAP] would have it that the cost of stocking and exporting Europe's huge current surplus of beet sugar is directly attributable to ACP imports. Never mind that when the protocol was signed, Europe was a net importer of sugar. Never mind the concept enshrined in the protocol that its implementation would be 'carried out within the framework of the management of the common organization of the sugar market'. The consummation of this train of logic would be that the prices paid to ACP sugar producers by *commercial buyers and refiners*, whose viability as a Community industry depends directly on ACP cane sugar, should somehow be seen as a form of aid."

As predicted by Harris and Hagelberg in their 1975 study, it is the operation of the CAP which has led to a less than generous interpretation not only of the price provisions but of all provisions of the Protocol. The problems stem from the 1974 decision to expand sugar production within the EEC and a number of current problems such as the stagnation of internal consumption, competition from substitutes and the situation and outlook of the world market in sugar.⁶⁵

The sixth annual report of the ACP-EEC Consultative Assembly in its examination of the experience of the Lomé link recommended various improvements which would lead to a more effective Sugar Protocol. These included:⁶⁶

- effective price negotiations which take into account all relevant economic factors and provide for genuine consultation of the ACP States and their effective participation;

⁶⁵ See Tsadik "International Sugar Market - Self Sufficiency or Free Trade" (1982) 16 JWTL 133 and Smith I "Structure and Policy Changes in World Sugar" (1977) 11 JWTL 228.

⁶⁶ See Annex VI to the 1982 Annual Report of the ACP-EEC Council of Ministers.

- adaptation of the CAP to ensure, subject to Article 7, that the agreed quantities are irreducible;
- limitation of domestic production to take account of domestic consumption, the Sugar Protocol and world market trends; and finally
- accession to the International Sugar Agreement by the EEC.

These recommendations closely mirror the recommendations of the European Parliament's Committee on Development and Co-operation in its report on the medium and long-term problems of the EEC's sugar policy in relation to Protocol 3.⁶⁷ The implementation of the recommendations of either of these two bodies would involve substantial changes to the Sugar Protocol, and to the operation of the CAP. As such, the chances of success are slim. In relation to the need for 'effective' negotiations, a possible result of which would be higher prices for ACP sugar, this would directly threaten the competitive potential of cane refiners in relation to beet producers. The elimination of the refining margin (between raw and white sugar) could have serious macro-economic effects for the ACP States, due to reduction of the competitive margins of EEC refiners. Internal adaptation of the CAP is also problematic. EEC participation in the 1977 ISA did not occur owing to the low level of quotas offered to it.⁶⁸ It seems unlikely that other sugar exporting nations would agree to EEC participation in future international sugar agreements should its demands be as large as those of 1977. As has been frequently stressed in this paper, the CAP is a delicate balance of economic, social and political forces, substantial adaptations to the sugar COM would necessitate the negotiation of a new balance between the remaining COM's. This would be a long and torturous process.

⁶⁷ Doc 1-456/83 Report on the medium and long term problems of the Community's sugar policy in relation to the ACP-EEC Sugar Protocol. Rapporteur V. Sable.

⁶⁸ See Harris "US and EEC Policy Attitudes Compared towards the 1977 ISA" (1980) 31 J Agr Econ 351.

Perhaps, the answer lies not in changes to the CAP but in changes to the nature of the Sugar Protocol.

Terlinden, in a major work on European sugar policy, has identified three possible options for the future of the Sugar Protocol.⁶⁹

- i. The ACP would be relieved of their contractual duty to supply the EEC. Imports would serve as an outlet for ACP States unable to sell their sugar on the world market.
- ii. If an ACP exporter is unable to sell on the world market, the EEC would buy the sugar on the spot for use as food aid;
- iii. Reduction in quotas in return for EEC aid to assist the diversification of the agricultural sector and economy of the ACP State."

Of these three possible options, the most advantageous to both parties is option 1, although a number of difficulties may arise. The option would operate as follows. The ACP would find a buyer on the world market and would receive from the EEC the difference between the world price and the guaranteed price. The level of the guaranteed price would increase as ACP exporters no longer have to pay transport costs to the EEC. The option would not affect the access of ACP sugar to the EEC as those quantities not sold on the world market would be marketed within Europe in the traditional manner. So, this option gives the ACP guarantees similar to those of the Sugar Protocol.

The Sugar Protocol would have to be renegotiated since Article 1(1) obliges the EEC to "purchase and import" a certain level of ACP sugar. The implementation of the Protocol would no longer take place within the framework of the management of the common organization of the sugar market. Further amendments would include; the price provisions (Article 5) and the non-

⁶⁹ Op cit n60, 115.

delivery provision (Article 7). The renegotiated protocol would meet the demands of the ACP over the price and afford the EEC an opportunity to reform its sugar COM. The renegotiated protocol would recognise the need for the ACP to develop their trade with markets other than the EEC and provide a means of economic support for the ACP during a transitional period, pending optimum diversification of their trade. The proposed regional commodity arrangements, the encouragement of local producer associations and the renegotiated sugar protocol all entail a certain level of economic de-coupling from the EEC. Is this the future direction of the Lomé link?

The future of the Lomé Link

The preceding analysis of the trade impact of Lomé, STABEX and the Sugar Protocol, indicate that whilst the ACP receive more preferential treatment from the EEC than any other third country or group of countries, the objectives set for the agreement have not been met. Heralded as a model for relations between developed and developing countries, the performance of the Convention marks a perpetuation of a pre-existing link with limited new features.

Despite the extensive nature of the trade preferences granted, the level of ACP-EEC trade as a percentage of total EEC trade has declined. The preferences granted suffer from either erosion or redundancy. Measures to alleviate the declining impact of preferences, such as STABEX and the Sugar Protocol, are plagued with internal difficulties, preventing their maximum efficacy. The decline in the efficacy of preferences will be further accentuated as the full impact of the accession of Spain and Portugal is felt. Although the markets of these two countries will be opened up, expanding the preferential area, the agricultural nature of the economics will result in a shrinkage of the market area for some

agricultural products.⁷⁰ The main culprit of this shrinkage is the CAP. The effect of the CAP and the application of its principles have already been noted in the context of the Sugar Protocol, with the rejection of the Portuguese offer to import ACP sugar. It has also been noted in the context of STABEX, with the refusal to include citrus fruits in STABEX.

The accession of Spain and Portugal will entail other consequences for the ACP, notably the reactivation of the internal debate on the orientation of the EEC's development policy. The link between the new member States and the countries of South America will be a new factor in the determination of external EEC policy. After enlargement, Sharp and Whittlemore predict,⁷¹

"... it will be significantly harder than today for the Community to reach any worthwhile consensus on external policies and harder to draw a line between the interests of the poorer member States and those of the third world bloc."

The recent enlargement of the EEC offers an opportunity to evaluate the Lomé link and to answer the following questions.

Why should the EEC perpetrate the link? and
What more can the EEC do for the ACP?

Initially responding to demands from France and later from the United Kingdom, it appears that the Lomé relationship is essentially a relic of the past. Although the objectives have broadened, the fundamental objective of assisting the process of development has remained. Yet none of the countries associated with the EEC through the Yaoundé or Lomé Conventions has developed into a newly industrialising country. The associated

⁷⁰ See Green "EEC Enlargement and Commercial Policy towards the Third World," and Van Themaat and Emmery "EEC Enlargement and Third World Trade," in ed de Bandt European Studies in Development.

⁷¹ Europe and the World Without (1977), 8.

countries remain amongst the poorest in the world. EEC commentators, speaking at the 'Forum on Development Policy after 1985' all recommended the continuation of the present geographical focus of the EEC's development policy.⁷² Such a geographical concentration of EEC efforts has given rise to criticisms of 'divide et impera' tactics. One commentator expressed the criticism as follows,⁷³

"there remains a nagging doubt — not only in the third world — that the EEC, by conferring a fundamentally non-replicable special trade and aid relationship on part of the third world and by encouraging the ACP to restrict the Community's own liberality towards the rest of the world, is using a development instrument — the Lomé Convention — to divide the developing world and to drive a wedge into the solidarity of the group of 77."

Despite the discriminatory aspects of the Lomé Convention, other developing countries have been able to increase their share of the EEC market. Clearly, the development instrument is failing to achieve its objective. Since association with the EEC has not helped the ACP to develop, perhaps it is time the links were either reduced or broken.

Earlier in this chapter the following recommendations were made; — the EEC should conclude regional commodity arrangements with the ACP: such agreements would be aimed at reducing price and quantity fluctuations and encouraging processing industries; — for products considered unsuitable for such arrangements, the EEC should agree to foster the aims of ACP producers associations; (Both these recommendations would involve changes to the STABEX system. For example the elimination of the provision

⁷² Ed Stevens *The EEC and the Third World: A Survey* Vol.III ch 12.

⁷³ Hewitt "The Lomé Convention: Myth and Substance of the Partnership of Equals," in *Europe and Africa: Issues in Post Colonial Relations*, 27.

allowing for the refusal of a transfer of the fall in export earnings was the result of a trade policy adverse to the EEC); and finally, — the renegotiation of the Sugar Protocol. This would basically involve removal of the provision of Article 1(1), "and import".

The implementation of these recommendations would result in a level of economic de-coupling from the EEC market. Initially the ACP should use these measures to promote intra-ACP trade. This promotion would be assisted by the provisions of Lomé III on regional co-operation. For example, Article 101 states,⁷⁴

"The Community shall support the ACP States efforts to promote collective and self-reliant social, cultural and economic development and greater regional self-sufficiency."

The promotion of intra ACP trade would form part of the Action Programme for Intra-ACP Co-operation as recognised in the Suva Declaration.⁷⁵ The results of the Kiel study on ACP-EEC trade would actually favour such this development.⁷⁶ The first step would be to use the proposed measures to promote intra-ACP trade. The second step would involve the ACP using Article 136 (2)(b) of the Lomé III Convention. This allows for the non-application of the mfn principle in respect of trade relations either on an intra-ACP level or on a ACP-developing country (non-ACP) level.

Primary responsibility for ACP development would thus rest on the ACP themselves. Should they decide not to take advantage of any of the above schemes or be unable to take advantage of the schemes, exports to the EEC would still be assured. EEC actions

⁷⁴ The Courier No.89, 27.

⁷⁵ The Courier No.75, 55.

⁷⁶ Op cit n2.

would perform an essentially supportive role. It would allow the ACP to expand production and export this production to other ACP States and provide assistance either through the regional commodity arrangements or STABEX whenever problems arise. The partnership between the EEC and the ACP would eventually dissolve as a new framework for ACP trade develops. In the interim the relationship will continue to benefit both parties.

In 1982 the Executive Secretariat of the Economic Commission for Africa offered two options for the development of Africa;⁷⁷

- a hard option; this would involve an orientation towards national and collective self reliance using domestic resources and implying a temporary partial delinking from the outside economy; and
- a soft option; this would have an emphasis on aid, access to aid and commodity price stabilization.

The soft option would be a continuation of past efforts, whereas the hard option could be implemented if the above recommendations were implemented. If implemented the hard option would not have to involve a 'temporary partial delinking' as the EEC could provide the necessary assistance, over a transitional period, to ensure the success of the scheme.

The transition of the Lomé link from a relationship established in 1957 to a relationship of co-operation will prepare the ACP to meet the challenges facing them for the remaining years of this century. The Lomé linkage currently one revolving around decisions made in the EEC by EEC institutions will change to one centering on decisions made by the ACP primarily affecting the level of intra-ACP co-operation. The individual and collective self reliance of the ACP will be fostered, and the EEC will have played a vital role in this. As the Lomé Conventions are supplemented by

⁷⁷ In ed Stevens op cit n73. Pronk "Europe and Africa: Hard and Soft Options for the 1980's."

the measures outlined above, criticisms such as the one outlined below will be rendered meaningless.⁷⁸

"One is left with the impression that the EEC is pursuing old policies with new means. In comparison with the previous association agreements, the Lomé Treaty is an improvement, but seen against the background of the real needs of the ACP during the final part of this century, the Convention cannot be called a very good agreement."

Implementation of the proposals outlined above will proffer hope that a future Lomé Convention will be called "a very good agreement".

If the question of world hunger is considered solely within the ambit of 'development aid policy' narrowly defined, it is difficult to argue that the EEC seriously exacerbates the problem. But if it is acknowledged that hunger in the developing countries is also affected by a host of other EEC policies and actions, many of which are framed without any direct reference to developing countries, then the question becomes very apposite.

The legal basis of the EEC's food aid policy is unable to provide a complete answer to the questions asked above, although it does provide some assistance. Originally, the policy was based on Article 43 of the Treaty, implying that food aid was a mere adjunct of the CAP. The legal basis of current food aid provisions is now Articles 43 and 235.¹ This composite legal basis, although recognising the intimate links between food aid and the CAP, indicates that a new policy goal is being pursued. Equally, it

1. Stevens "Hunger in the World. Does the EEC exacerbate or alleviate it?" in ed Stevens The EEC and the Third World A Survey Vol. II Hunger in the World (1984).

2. *Ibid.*, 1.

3. E.C. Council Reg 2491/74 on Community financing of expenditure

⁷⁸ Frey-Wouters The European Community and the Third World (1980), 253.

CHAPTER 4: HUNGER IN THE WORLD

The purpose of this chapter is to examine one particular aspect of the EEC's policy towards developing countries — the provision of food aid. Is this policy a mere adjunct of the CAP or is it part of the development policy of the EEC? The debate over the true categorisation of the EEC food aid policy revolves around the resolution of these two questions. Alternatively, one author has framed the question thus; "Hunger in the world — does the EEC exacerbate it or alleviate it?"¹ The attempt to answer this question yielded the following answer,²

"If the question of world hunger is considered solely within the ambit of 'development aid policy' narrowly defined, it is difficult to argue that the EEC seriously exacerbates the problem. But if it is acknowledged that hunger in the developing countries is also affected by a host of other EEC policies and actions, many of which are framed without any direct reference to developing countries, then the question becomes very apposite."

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¹ Stevens "Hunger in the World. Does the EEC exacerbate or alleviate it?" in ed Stevens The EEC and the Third World A Survey Vol.II Hunger in the World (1984).

² Ibid, 1.

³ E.g. Council Reg.2681/74 on Community financing of expenditure incurred in respect of the supply of agricultural products as food aid, OJ L 288/1.

indicates that the food aid policy is neither an integral part of the EEC's agricultural policy nor an integral part of the development co-operation policies of the EEC. An analysis of the EEC financing incurred in respect of the supply of agricultural products as food aid also fails to provide a clear answer to the questions asked above. Whereas that portion of expenditure which corresponds to the export refunds is charged to the Guarantee Section of the FEOGA, all other expenditure is charged to Chapter 92 of the Budget. Perhaps an analysis of the operation of the food aid policy will determine the answer to the questions asked above.

Food aid as an adjunct to agricultural policy

It is the origins of food aid which gives rise to the belief that it is a mere appendage to domestic agricultural policies. As Cathie notes,⁴

"The giving of aid in kind has largely arisen as an expedient outcome of the protectionist agricultural policies of the developed agricultural producers and not as a response to the immorality of the world hunger."

Given this fact, it was assumed by many that food aid was a means of distorting trade, a concealed form of dumping or a disguised subsidy for commercial sales, allowing an unfair means of entry into new markets. To counter these criticisms, a series of principles on Surplus Disposal were formulated. A surplus disposal is defined as,⁵

⁴ The Political Economy of Food Aid (1982), 3.

⁵ For a discussion of the FAO Principles, see FAO Secretariat "Food Aid and Other Forms of Utilization of Agricultural Surpluses: A Review of programmes, policies and consultation." Proceedings of UNCTAD 1 (1964) Volume III, 403.

"An export operation (other than a sale covered by an ICA) arising from the existence or expectation of abnormal stocks and made possible by the grant of special or concessional term is through government intervention."

The principles, which are supervised by a Committee on Surplus Disposal, list the objectives for formulating disposal programmes as; (a) increased consumption (or additionality); (b) orderly disposal to avoid sharp falls in prices; and, (c) the avoidance of harmful interference with the normal patterns of production and international trade, through voluntary consultations. To add greater precision to the principles, the usual market requirement was introduced. This provides that the food aid agreement concluded between the donor and the recipient should require the recipient nation to import food on a commercial basis. This would alleviate some of the harmful consequences, of surplus disposal, to the normal pattern of trade.⁶

In the early days of surplus disposal, by far the largest donor was the United States. The Agricultural Trade Development and Assistance Act 1954 (usually referred to as PL 480), was the legal basis of the US surplus disposal programme. The rationale of the legislation, the cost of storing surpluses could be linked with the food deficits of developing countries, helped earn food aid a bad reputation. A reputation of food aid being used to serve domestic agricultural programmes of developed countries rather than fostering the agricultural growth of developing countries. The proposals for a multilateral food aid agency was an attempt to redirect the objectives of food aid away from surplus disposal and towards helping the process of economic and social development.

Plans for the establishment of an international agency to co-ordinate and control food aid operations were first mooted in

⁶ See Cathie op cit n4, 53. (Chapter 3 Principles of Surplus Disposal, the WFP, and International Food Aid Policy.)

1946. A proposal by the Director General of the FAO would have led to the introduction of a World Food Board (WFB). The responsibilities of this Board would have included the accumulation of stocks; the disbursement of stocks to countries in need; and the provision of funds for the disposal of surplus agricultural products. The proposal was not acceptable. The interventionist nature of the proposed Board was a cause of concern for many countries. This reason recurred when a later proposal was made for the establishment of an International Commodity Clearing House. Having functions analogous to the proposed Board, countries feared the impact on multilateral trade which would result from the House's activities.⁷ However, an agency was eventually established — the World Food Programme (WFP).⁸

The rationale behind the creation of the WFP was the exploration and application of methods of using food aid which would not have adverse effects on the recipients of such aid. The WFP, using a project approach to food aid, developed several categories of projects, the disbursement of food aid to which would accelerate the process of economic and social development. The categories of WFP projects are (i) economic and social infrastructure projects; (ii) directly productive projects and (iii) human resource projects. (Priority is accorded to categories (i) and (ii)). The potential advantages of WFP operations are:⁹

- i. food aid may be linked with other forms of aid;
- ii. the establishment of a pool of money can contribute to the flexibility and efficiency of food aid programmes and

⁷ See Sanderson "The role of international trade in solving the food problems of developing countries." in USDA: International Food Policy Issues (1978).

⁸ See Cathie op cit n4, 53, Introduction: International Food Aid Policy.

⁹ Ibid, chapter 2.

- iii. the concentration of operations in a single international agency makes it possible to ensure the highest level of welfare for all concerned and ensure efficiency in aid administration.

Despite the potential advantages stemming from the WFP co-ordination of food aid, bilateral programmes continue to have an important role to play in the provision of food aid.

The food aid policy of the EEC began on 1 July 1968 with the entry into force of the Food Aid (Cereals) Convention. This was one of the more positive results of the Kennedy Round of multilateral trade negotiations.¹⁰ Since that time the essential scope and objectives of the EEC's food aid policy have altered. Although envisioned as a means of surplus disposal, the policy now follows a more development-oriented approach. The question of to what extent it still fulfils some role within the CAP remains unanswered. The main objectives of the EEC's food aid policy are to lend support to the balance of payments of recipients, to improve the nutrition of the recipients and to lend assistance to development through transfer of resources. These objectives are reflected in the criteria for allocation of food aid, which are:¹¹

1. Need. This is assessed on the basis of cereal import requirements derived from FAO estimates;
2. Per capita GNP. This is used as an indication of poverty. Based on World Bank figures, three categories of countries have been established (poorest, intermediate and other special cases); and,
3. Balance of Payments deficit. This is assessed in absolute terms and as a percentage of projected total imports.

The range of products given by the EEC as food aid include cereals, rice, milk products (milk powder and butter oil), sugar and

¹⁰ Op cit n5, 407.

¹¹ Green Europe 184. Community Food Aid, 1.

vegetable oils. Provision is also made in the budget for food aid to be given in other products.¹²

The principal mechanisms used for the disbursement of EEC food aid are, (i) Food for work; (ii) The provision of food security stocks; (iii) Direct Action and (iv) Counterpart Funds. The latter two deserve further explanation. The direct action use of food aid involves schemes targeting specific groups (such as school children) or an operation combining rural development and agricultural development. An example of this is the Operation Flood project in India. The objectives of the scheme include the development of local milk production, the guarantee of stable supplies of milk and the promotion of rural producers self-reliance. The EEC provides food aid, in the form of milk products, which are then re-constituted and help the scheme achieve its objectives. The other use of food aid which merits further comment is the use of counterpart funds. These funds are generated by the sale of food aid on local markets and are used to finance development schemes agreed between the EEC and the recipient.¹³

Despite the varied use of the food aid provided by the EEC, the policy has come in for considerable criticism.¹⁴ For example, despite the requirement that food aid should not act as a disincentive to local production, it alleged to have this effect. By giving food aid, a demand for an imported product may develop in preference to the domestic product, thereby discouraging production. Moreover, if the food aid is marketed free or at subsidised prices, the downward effect on domestic producer

¹² Green Europe 175. The CAP and World Food Shortages: Food Aid, 4.

¹³ Chapter 92. Food Aid and Food Projects in place of food aid(Chapter924).

¹⁴ See Europe Doc N 1249/1250: The Pisani Memorandum on the EEC's New Food Aid Strategy. pt 2.2.5 Aid for setting up production chains.

prices may act as a disincentive to local production. In both of these cases food aid inhibits the development of local production. In addition, the commitment of the EEC to provide a certain quantity of agricultural products as food aid acts as an incentive to EEC producers. A situation of additional domestic demand is created. The advantage of this increase in domestic demand is that it decreases the real cost of food aid and indirectly serves the objectives of the CAP. It is not difficult to determine the real objective of the EEC's food aid policy. A demand is created for CAP products which in the absence of the food-aid policy would not exist. Although food aid may meet the nutritional requirements of its recipients, and this has been doubted,¹⁵ it may also further weaken the balance of payments situation of the recipient and thereby further retard the process of economic development. Concern about the nature of the EEC's food aid policy, in particular and the problem of hunger in the world, have brought about a rethink in the objectives of the policy.

Whilst anxious to preserve the positive aspects of the programme, the EEC, spurred on by the European Parliament, has found another way of dealing with hunger in the world.

resulted in a plan of action to combat world hunger.¹⁷ The plan was based on four types of operation. These were;¹⁸

1. A special food operation to mitigate the consequences of the present shortfalls in the least developed countries and make available to the International Emergency Food Reserve the resources which it still lacks;
2. Joint comprehensive action in support of national policies to develop the agricultural

¹⁶ Becker "Food Aid: A negative factor" 31 August 1980.

¹⁷ Op cit 11 Resolution of September 1980.

¹⁵ E.g. Jones and Tulloch "Is Food Aid Good Aid?" ODI Rev 2/74, 1.
Stevens Food Aid: "More sinned against than sinning?" ODI Rev 2/77, 71.

Food aid as development aid

In a 1980 debate on hunger in the world, the European Parliament linked the process of development with the elimination of world hunger.¹⁶ They considered it essential that as many developing countries as possible should achieve self-sufficiency in food. The means to achieve this end was the adoption of food strategies on either a local, national or regional level. The role of the EEC would be to:

- provide appropriate financial assistance based, inter alia, on multi-annual financing measures and financing provided jointly with member States and international organizations; and
- guarantee the technical aid needed to enable developing countries to define and implement their own food strategies.

The EEC's food aid policy would have to be reviewed and adjusted to take into account developing countries security of food supplies and their agricultural and rural development.

The review of the food aid policy, carried out by the Commission, resulted in a plan of action to combat world hunger.¹⁷ The plan was based on four types of operation. These were;¹⁸

- "1. A special food operation to mitigate the consequences of the present shortfalls in the least developed countries and make available to the International Emergency Food Reserve the resources which it still lacks;
2. Joint comprehensive action in support of national policies to develop the agricultural

¹⁶ Bethke "Food Aid. A negative factor." 31 Aussenpolitik 180.

¹⁷ Op cit n1 Resolution of September 1980.

¹⁸ COM (81) 560 Towards a plan of action to combat world hunger.

sector implemented by developing countries that wish to place their efforts and those of aid donors within a coherent food strategy;

3. Operations with a specific theme covering regional groups of countries having to face similar difficulties in combatting the deterioration of their natural production conditions and developing their potential resources; and,
4. Measures to increase the external food security of the developing countries."

The favoured type of operation was number 2, the food strategy approach. This approach involves a change of direction for the food aid policy, placing its operations in the context of a development policy, to further the objectives of that policy. Williams has described a food strategy as,¹⁹

"[an] integrative policy approach to food production, distribution and consumption, encompassing the broad economic and social policies and reforms which affect the wider distribution of income and peoples access to food."

The development of a food strategy is essentially a political act, requiring the ranking of development priorities. The Commission in its plan of action identified those countries who had prepared a coherent food strategy and it identified three criteria for identifying those countries with which a start could be made. The criteria required that the developing country to have a large food shortfall, the capacity and the will to conduct valid food strategies and be recipients of substantial aid from the EEC and its member States.²⁰ The four countries chosen were, of necessity all ACP States, Mali, Rwanda, Kenya and Zambia. The only factor linking

¹⁹ Ibid, 4.

²⁰ The Courier no.84, Dossier. Food Strategy, 48.

all four was the rate of population growth and the declining percentage of which was actively employed in agricultural production.

The purpose of the food strategy in Mali was to re-organize the grain market and thereby halt the increasing food deficit in that commodity.²¹ In Kenya, the aim was to restore productivity to the agricultural sector and so bring about a return to self-sufficiency, and perhaps surplus.²² A similar problem was faced in Zambia where the task was one of balancing the needs of food production, the need to generate foreign exchange and the requirements of the country's fast-expanding urban sector.²³ The Rwandan problem was mounting pressure on land. The food strategy was to concentrate on improving marketing, storage and processing and promoting access to agricultural inputs and research in an effort to conserve natural resources.²⁴ The challenges faced in each of the food strategies was different, yet the conditions for success in each were the same. Two such conditions exist:

- first, the donor countries and organizations have to make their aid a direct part of whatever implementation plan the recipient has decided on and adapt their schemes to its chosen rate of implementation; and
- second, the recipient has to set up a permanent consultation process with the donors ...

Given these requirements and the nature of food strategies, any results will take time. The 1986 review of the four food strategies found (i) Mali, "the results have been positive though not all initial expectations have been fulfilled"; (ii) Kenya, "generally effective";

²¹ Ibid, 51.

²² Ibid, 56.

²³ Ibid, 59.

²⁴ Ibid, 61.

(iii) Zambia, "the EEC effort has contributed to paving the way for many food policy reform measures taken by the government"; and (iv) Rwanda — "the EEC has actively supported progress in the main areas". The results, as can be seen from the above quotes, are difficult to evaluate. The interlocking of EEC aid and internal initiatives further complicate this assessment.²⁵

Despite the unproven nature of the food strategy approach, it has been written into the Lomé Convention.²⁶

"Community measures aimed at food security in the ACP States shall be conducted in the context of the food strategies or policies of the ACP States concerned and of the development objectives which they lay down.

They shall be implemented, in co-ordination with the instruments of the Convention, in the framework of EEC policies and the measures resulting therefrom with due regard for the Community's international commitments."

As a result of the implementation of the food strategy approach, there have been parallel developments in food aid policy, these are also to be found in the new Lomé Convention.²⁷ The developments consist of the adoption of a new set of guidelines for EEC policy.²⁸ These guidelines include the integration of food aid, as thoroughly as possible, with development policies. This calls for consistency between food aid and other co-operation measures. Food aid will continue to concentrate on low-income food-deficit countries. The guidelines also provide for multi-

²⁵ Ibid, 62.

²⁶ The Courier No.100, 20. COM (83) 320. A special programme to combat hunger in the world.

²⁷ Article 33 Lomé III. The Courier No.89, 16.

²⁸ Ibid, point 3. See also COM(81)429. Negotiation of framework

for the multilateral supply of agricultural products.

²⁹ "Food Strategies: Review and Prospects." The Courier no. 100,23.

annual food programmes which will be used to encourage the development of food production.²⁹ Until food self sufficiency is reached, food aid will continue to have a role, particularly through the use of counterpart funds. It was also recognised that triangular operations should be encouraged. This type of aid involves buying products in developing countries which have an exportable supply and donating it to a country with a deficit. This type of operation not only stabilizes the market in the producer country, provides the recipient country with a 'local product' but also makes a contribution to regional food security.³⁰

The implementation of food strategies involves a reduction in the importance of food aid, although it may still play a role within the confines of the strategy. Given the requirements of the food strategy, the need for increased financial, technical and agricultural co-operation, it was only natural that the four pilot countries were members of the ACP. However, the choice of these four countries, although technically providing more food aid, is another source of discrimination effected by the Lomé Convention against non-ACP States. As Kennes remarks, in respect of food strategies,³¹

"It is now time to generalise the approach, in a modest and pragmatic way, where it is possible, both within and outside the ACP countries, taking into account the specific circumstances and learning from the strengths and weaknesses encountered in the four countries"

²⁹ Op cit n20, 55. See also COM (82) 320. A special programme to combat hunger in the world.

³⁰ Idem, point 3. See also COM(81)429. Negotiation of framework agreements relating to the multiannual supply of agricultural products.

³¹ "Food Strategies: Review and Prospects." The Courier no. 100,23.

Answering Questions

This chapter began by asking the question : Is the EEC food aid policy a mere adjunct of the CAP or is it part of the EEC's development policy? An examination of the legal and financial bases of the policy did not reveal the answer. The analysis of the operation of the policy shows that although it started as a means of disposing of agricultural surpluses, it has moved towards being a tool in the process of development.

The latest Commission paper on the food aid policy states that food aid is now an integral part of the development policy.³² They point to the 1984 decision allowing for the possibility of replacing food aid by credit, where there is a risk of upsetting the recipients market, as evidence of the transformation of the policy.³³ Proposed reforms, such as the encouragement of triangular operations, clearly point the way forward for food aid policy as an integral part of development. Should these operations also be accompanied by greater use of counterpart funds and the active promotion of food strategies, food aid policy will truly belong as a part of the development aid policy.

However, such changes involve internal consequences. If greater use is made of triangular operations and food strategies are encouraged the additional demand created by past food aid operations will have to be dealt with. It is, of course, possible that the quantities of agricultural products not used for bilateral food aid may be devoted to multilateral food aid agencies, such as the WFP. Given the fact that decreases in agricultural production will be difficult to achieve and that the 'real' cost of food aid will rise as less of it is obtained on the EEC market, is there any other avenue down which this additional domestic demand may be

³² The Courier No.99. Yellow Pages XIII.

³³ Idem. 116.

as less of it is obtained on the EEC market, is there any other avenue down which this additional domestic demand may be channelled? One answer could be Article 34 of Lomé III. This provides,³⁴

"With regard to available agricultural products, the Community undertakes to ensure that export refunds can be fixed further in advance for all ACP States in respect of a range of products drawn up in the light of the food requirements expressed by those States."

The question of the supply of available agricultural products has been the subject of debate between the ACP and the EEC since 1976. So far, it has not proved possible to reach an agreement which satisfies both parties.³⁵ The ACP want a guarantee for a multi-annual programme of supplies, at preferential prices, with special payment terms. The Community insist that the transactions must take place within the normal contractual framework and that the machinery of the CAP be respected. So the EEC would offer the ACP the possibility of purchasing cereals, milk products, some sugar and possibly other foodstuffs at prices stabilized by prior fixing of export refunds. Note the convergence of the products on offer with those used in the EEC's food aid policy. While not meeting the demands of the ACP, the EEC's offer does recognise some of the concerns expressed by them. In order to pursue the question of the availability of agricultural products, Annex III to Lomé III instructed the Committee of Ambassadors to establish a working party to carry out a detailed study of the question. Despite a deadline, the report of this working party is not yet forthcoming.³⁶

³⁴ Op cit n27, 17.

³⁵ See for example the 1982 Report of the ACP-EEC Council of Ministers, 19-20.

³⁶ Op cit n27, 118.

Should the EEC and the ACP fail to reach a mutually acceptable solution to the question of the availability of agricultural products, what impact would this have? Would domestic agricultural production in the EEC have to be restructured? Such restructuring may be deemed necessary considering the impact of food aid policy as part of development policy. Triangular operations, for example, promote stabilization of local markets and contribute to food security. Food strategies have similar goals. Recall the aim of the Kenyan food strategy a restoration of the position it enjoyed before 1978, self sufficiency and surplus. The plan of action to combat world hunger included, as one of its operations, measures to increase the food security of developing countries. The disruption of international markets caused by the disposal of EEC agricultural surpluses would threaten this security.

Once again the lack of consistency between internal and external EEC policies manifests itself. Once again a need is shown for an agricultural trade policy and for consistency between that policy and the development co-operation policies of the EEC.

The Origins of the GSP

The first attempt to introduce the concept of preferential treatment for developing countries into the international trade order occurred in the context of the Havana Charter. Article 15 of which read,²

"The members recognize that special circumstances, including the need for economic development and

¹ *European Political Co-operation* (3rd ed), 35, 44.

² *Cand Paper* 7375, 18.

CHAPTER 5: THE GENERALIZED SYSTEM OF PREFERENCES.

The 1972 Paris Summit of the Heads of State and Government of the member States of the EEC, resolved, *inter alia*, to¹

"... progressively to adopt an overall policy of development co-operation on a world-wide scale, comprising, in particular, the following elements:

- the improvement of generalized preferences with the aim of achieving a steady increase in imports of manufactures from the developing countries."

The purpose of this chapter is to examine the origins and workings of the Generalized System of Preferences (GSP). Considering the above resolution of the Paris Summit, the question addressed will be, is the Generalized System of Preferences an effective part of the EEC's development co-operation policies? If the answer to the question is no, and criticism of the GSP suggests that this may be so, the question of changes to the nature of the GSP to ensure that it meets its objectives, will be addressed.

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The first attempt to introduce the concept of preferential treatment for developing countries into the international trade order occurred in the context of the Havana Charter. Article 15 of which read,²

"The members recognize that special circumstances, including the need for economic development and

¹ European Political Co-operation (3rd ed), 35, 44.

² Cmd Paper 7375, 19.

reconstruction, may justify new preferential agreements between two or more countries in the interest of the programmes of economic development or reconstruction of one or more of them."

It has to be noted that the idea of a preferential treatment was to meet the need for "economic development or reconstruction", thereby allowing developed countries to use the Article. The constraints imposed by Article 16 (General mfn treatment) and Article 17 (Reduction of tariffs and elimination of preferences) severely limited the potential scope of Article 15. In any case, the provision was not put to the test, because of the non-ratification of the Charter. The debate on the question of preferential treatment for developing countries lay dormant until 1963, when two separate proposals were discussed which would have allowed special tariff treatment for developing countries. The first of these proposals resulted from the work of Committee III, a Committee established as a result of the Harberler Report. The proposal had the following elements:³

- i. duty free entry into developed country markets should be granted for tropical products (deadline for implementation 31 December 1963);
- ii. developed countries should agree to the elimination of customs tariffs on the primary products important in the trade of developing countries; and,
- iii. developed countries should also urgently prepare a schedule for the reduction and elimination of tariff barriers to exports of semi-processed and processed products from developing countries providing for a reduction of at least 50% of the present duties over the next three years.

The second proposal, the so-called Brasseur plan, was more restrictive than the first proposal. The plan called for the

³ See BISD 10th Supp 25.

negotiation on a case by case basis, of selective measures between developed and developing countries. This system of selective temporary and degressive preferences, for which no reciprocity was expected, was designed to help infant industries in the developing countries become internationally competitive.⁴

Both proposals were not well received, Contracting Parties to the GATT were worried about the effects of the proposals on the new round of multilateral tariff negotiations, on which they were about to embark (The Kennedy Round). The Contracting Parties resolved that, in the course of these negotiations no effort would be neglected to reduce the obstacles facing developing countries exports. As Tulloch notes, the only positive outcome of the negotiations within the GATT and Committee III, was the recognition of the principle of non-reciprocity in trade negotiations between developing and developed countries.⁵ Dissatisfaction with the results achieved within the framework of GATT led developing countries to switch the focus of their demands to UNCTAD. In a list of principles to govern international trade, resolved at UNCTAD I, General Principle 8 indicated that the developed countries should grant tariff concessions to all developing countries and should not require any concessions in return.⁶ The demands for a preferential tariff scheme, elaborated on by the Charter of Algiers, resurfaced at UNCTAD II in 1968. Resolution 21 of the Conference reads,⁷

⁴ Tulloch The Politics of Preferences ch 5 History of the Community's GSP.

⁵ Ibid, 38. See Part IV of the GATT.

⁶ Proceedings of UNCTAD I (1964) Vol.1. Part 1. Action taken by the Conference.

⁷ Proceedings of UNCTAD II (1968) Vol.1. Part I. Action taken by the Conference.

"Recognizing the unanimous agreement in favour of the early establishment of a mutually acceptable system of generalized non-reciprocal and non-discriminatory preferences which would be beneficial to the developing countries.

Agrees that the objectives of the generalized, non-reciprocal, non-discriminatory system of preferences in favour of the developing countries, including special measures in favour of the least advanced among the developing countries should be,

- (a) to increase their export earnings;
- (b) to promote their industrialization; and
- (c) to accelerate their rates of economic growth."

Having agreed in principle to the establishment of a system allowing preferential tariff treatment for developing countries, the developed (donor) countries established an OECD Special Committee on Preferences. The report of this Group forms the core of the donor countries ideas on the GSP. Their conclusions include the following:⁸

- i. Special tariff treatment in developed country markets could help developing countries increase their export earnings;
- ii. Such arrangements would not involve any reciprocal advantages in developing country markets for developed countries;
- iii. Such arrangements should apply to all industrial products (Chapters 25-99 BTN). Other products could be included on a case-by-case-basis; and
- iv. As for beneficiaries, donor countries would base themselves on the principle of self-election.

The scheme would run for an initial period of ten years, a comprehensive review before the end of this period would

⁸ "Tariff Preferences for Developing Countries". Documentation forwarded by the OECD to UNCTAD (1970) 4 JWTL 474.

determine whether or not it should be continued. It was emphasised that the tariff preferences were temporary in nature and that they did not constitute a binding commitment. Moreover, the granting of preferences was not to impede subsequent reductions of tariffs on a mfn basis or the subsequent withdrawal of the preferences.⁹ This latter condition reflected disagreements within the Group on the nature of safeguard mechanisms. Even given these constraints, the implementation of the system of preferences was made conditional on its legal compatibility with the provisions of the GATT.¹⁰

Faced with this problem of compatibility with the provisions of the GATT, the GATT Secretariat proposed three possible solutions:¹¹

- (a) a waiver under Article XXV to cover the preference system; or
- (b) an amendment to the General Agreement; or
- (c) a unanimous declaration by the Contracting Parties authorizing preferences for a limited period of time.

Despite the recommendation of the Secretariat that option (c) should be chosen, the Contracting Parties opted for a waiver. This states that the provisions of Article I GATT (the mfn provision) should be waived for a period of ten years, to the extent necessary to allow developed countries to accord preferences to products originating in developing countries.¹² Echoing the conclusion of the OECD Group, the waiver reaffirms the temporary, non-binding nature of the commitment and the conclusion that the operation of the GSP should not constitute a barrier to further mfn tariff reductions. Although the inclusion of these elements

⁹ Agree Conclusion IV of the Special Committee on Preferences.

¹⁰ Agree Conclusion IX(2)(c).

¹¹ See Yusuf A Legal Aspects of Trade Preferences for Developing States.

¹² BISD 18th Supp 24.

undoubtedly satisfied the developed 'donor' countries, the developing countries were not satisfied with the waiver. They complained that the temporary nature of the derogation would act as a disincentive to possible investment in developing countries. Moreover, the temporary derogation did not recognise preferential treatment as a principle of international trade law.¹³

The GSP was placed on a sounder legal foundation by the 1979 decision of the, Contracting Parties on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (The Enabling Clause). The main provision of the text reads,¹⁴

"Notwithstanding the provisions of Article I of the General Agreement, Contracting Parties may afford differential and more favourable treatment to developing countries, without according such treatment to other Contracting Parties."

Although falling short of a modification of the legal structure of the GATT, the provisions of the decision permanently inserts into the law of GATT the commitment of the developed countries to grant differential and more favourable treatment to developing countries.

Despite the solution to the problem of the legal compatibility of the GSP with the GATT, the simultaneous introduction of all the GSP schemes did not eventuate. Arguments concerning reverse preferences granted by the AASM to the EEC under the Yaoundé Convention delayed the introduction of the United States scheme until 1974. Anxious to avoid the rigidity which would be imposed

¹³ Yusuf "Differential and More Favourable Treatment: The GATT Enabling Clause" (1980) 14 JWTL 488, 507.

¹⁴ BISD 26th Supp 203.

by attempts to harmonise preference schemes, the EEC introduced its scheme in 1971. It was heralded as,¹⁵

"[giving] immediate and significant benefits to developing countries and gives further proof, if any were needed, that far from being protectionist, [the Community] is both liberal minded and outward looking."

The next section of this chapter outlines the evolution of the EEC's scheme and assesses the veracity of this assertion.

The Evolution of the EEC's GSP

The scope of the EEC's scheme was determined by many factors. Tulloch notes the three main sources of pressure were,¹⁶

- i. the commitment to existing common policies with political and temporal priority over the GSP. (This included the CAP and the Association Policy.)
- ii. Industrial and agricultural lobby pressures.
- iii. National policies, themselves influenced by national lobbies.

By examining the influence of these pressures, the scope for an effective GSP will be determined. The Associates, and later the ACP, were anxious to ensure that the existing level of preferences were maintained and that any new products which could be exported by them would be guaranteed a certain level of preferential market access. No preferences would be given on

¹⁵ Cited in Cooper "The EC's System of Global Tariff Preferences: A Critique" (1971-72) 8 J of Development Studies 379, 381.

¹⁶ Tulloch op cit n4, 65.

those products for which the AASM, and later the ACP, did not benefit from preferences. This factor has been constant limitation on the effectiveness of the GSP. Not only does the EEC have to guarantee a certain level of preference for the ACP, but also for the Mediterranean countries and even the EFTA countries. The GSP does not rank highly in the EEC's hierarchy of preferences, standing as it does above a handful of countries subject to the mfn and other countries not yet members of the GATT.

Although the GSP was originally envisaged as a scheme to assist manufactured exports from developing countries, the EEC's scheme also included agricultural products. Whereas the manufactured/industrial list was drawn on the basis that all products were included, subject to exception, the agricultural list operated on the reverse assumption. Products would have to be specifically included. In the elaboration of the list of agricultural products which would benefit from the GSP, the EEC was guided by a number of rules. Recalling the purpose of the scheme, and especially its application to manufactured or semi-manufactured products, no preferences would be given to basic products or to products which had undergone only simple processing. For those agricultural products which were subject to variable levies, no preferences would be granted since it would be difficult to identify the industrial protection element of the variable levy. If goods were subject both to customs duty and a levy, preferences would be granted, whilst maintaining the levy.¹⁷

The desire to protect domestic processing industries also featured in the limitation of the EEC's offer. Preferences would not be granted on those products where developing countries processing industries strongly competed with domestic processing industries. The results of these limitations was an initial list of processed agricultural products which protected domestic farmers and processing industries and the export interests of the AASM (ACP).

¹⁷ Ibid, 72.

The accession of the United Kingdom and Denmark, who before accession had extremely liberal agricultural product lists, led to a progressive increase in the number of products subject to preferences.

The GSP is the only instrument by which the EEC can satisfy the demands of developing countries as they conclude co-operation agreements with the EEC. Agreements with India, Pakistan, Sri Lanka, Bangladesh, the countries of ASEAN and of Latin America has further expanded the product coverage. The 1986 scheme gives preferences on a total of 351 processed agricultural products.¹⁸ Domestic interests and the interests of the ACP continue to limit the scheme. This occurs mainly through the depth of the tariff cuts, tariff quotas for certain products, the rules of origin and the safeguard clauses of the GSP regulations.

Depending on the sensitivity of the product the preferential margin consists of a cut of varying depth in the customs duty or in some cases complete exemption. In 1986, 81 products were given complete exemption from customs duties, although the variable component may still be levied on some of these products.¹⁹ Most agricultural products benefit not from duty-free treatment but from a reduced rate, which varies from product to product. In some cases, the tariff reduction is small (e.g. natural honey 27% mfn, 25% GSP), whilst for others the remaining tariff has a certain nuisance value (e.g. bilberries provisionally preserved, 2%). As part of its efforts to help the least developed amongst the developing countries, the EEC's scheme allows for the duty free entry of all products covered by the scheme, plus two others (unroasted coffee and raisins).²⁰ However, the least developed

¹⁸ OJ 1986 L 362/198.

¹⁹ Ibid, Article 1(3).

²⁰ Ibid, Annex V.

developing countries must abide by the tariff quotas set for various products. The products subject to tariff quotas are:

- i. Raw or unmanufactured tobacco other than the Virginia 'flue-cured' type, excluding sun-cured oriental type. (The 1986 quota is 12,917 tonnes);²¹
- ii. Raw or unmanufactured virginia 'flue cured' type tobacco (the 1986 quota is 65,992 tonnes, an increase of nearly 5000 tonnes on the 1985 quota);²²
- iii. Soluble coffee (the 1986 quota is 19,200 tonnes, an increase of one hundred ton on the 1985 quota);²³
- iv. Preserved pineapples, other than in slices, half slices or spirals (the 1986 quota is 46,750 tonnes compared with the 1985 quota of 44,900 tonnes);²⁴ and,
- v. Preserved pineapples, in slices, half slices or spirals (the 1986 quota is 22,475 tonnes compared with a 1985 quota of 29,560 tonnes).²⁵

The 1986 scheme bears witness to the purpose of these quotas, the protection of the export interests of the ACP States. The 1985 tariff quota for cocoa butter (22,000 tonnes), a product of export interest to the ACP, has been suppressed.²⁶ For each of the quota products an EEC reserve is established, the remaining quota is divided between the member States. When a member State has utilised 90% of its share, it draws a second share from the EEC reserve. The process continues until the reserve is depleted at which stage the products cease to benefit from preferential

²¹ Ibid, Articles 3-7.

²² Ibid, Articles 8-12.

²³ Ibid, Articles 13-16.

²⁴ Ibid, Articles 18-22.

²⁵ Ibid, Articles 23-26.

²⁶ OJ 1985 L 338/183, Articles 13-18.

treatment and the mfn rate of duty is imposed on further imports into the EEC.²⁷

If a developing country decides to take advantage of the preferences offered, the product will benefit from preferential treatment only if it meets the rules of origin. Under these rules, a product is entitled to receive preferential treatment if it meets the following conditions;²⁸

- i. it must have been produced wholly in the beneficiary developing country or if materials or parts were imported, these must have undergone sufficient working and processing in that country;
- ii. it must be consigned directly from the beneficiary country to the EEC; and
- iii. the fulfilment of these requirements must be supported by documentary evidence.

The rules of origin, like those of the Lomé Convention, are based on the tariff leap/substantial transformation concept. Those processes which do not meet the qualifying criteria are listed in List A, whereas qualifying processes are enumerated in List B. Although the rules of origin of Lomé and the GSP are similar, many of the process requirements are less stringent under Lomé. An UNCTAD study on the GSP and the Lomé Convention gives the following example,²⁹

"Under the GSP rules of origin with respect to chocolate and other food preparations containing cocoa (CCT heading 18.06) non-originating sucrose must not be used and cocoa beans, cocoa paste, cocoa butter and cocoa powder cannot exceed 40% of the

²⁷ Op cit n18, Article 4.

²⁸ See Nusbaumer "Origin Systems and the Trade of Developing Countries." (1979) 13 JWTL 34.

²⁹ TD/B/C.5/36 Effects of the GSP on Ldc's sharing their special tariff advantages, 18.

value of the product obtained. Under the Lomé rules, non-originating sugar may be used for up to 30% of the value of the product obtained. Also non-originating cocoa beans, paste, butter or powder may be used since the rule of change in BTN heading applies."

In addition to the more liberal rules of origin the ACP benefit from cumulative treatment (i.e. when finished products which have undergone successive transformations in more than one ACP State still enjoy preferential treatment when they are imported into the EEC from the country which performed the last processing operation).³⁰ The GSP rules accord cumulative treatment to only three regional groupings, ASEAN, the Andean Pact and the CACM. Until January 1986, this treatment was only partially cumulative, however, on January 1 all restrictions on the arrangements which went beyond the normal rules of origin were deleted. The new rules provide that;³¹

"... materials, parts and components originating in one country in a regional group can be used by another country in the group and will be considered as originating 100% in the latter country when subject to processing there."

The rules will become operational whenever each country concerned notifies its compliance to the Secretariat of the regional grouping in question. The strict interpretation of the GSP rules of origin has the indirect effect of excluding potential preferential trade.

The final limitation on the scope of the GSP imposed by the convergence of domestic and ACP pressure is a reflection of the non-binding nature of the commitment represented by the GSP.

³⁰ See Protocol 1 to the third Lomé Convention: The Courier No.89, 68-108.

³¹ TD/B/C.5/105 10th General Report on the Implementation of the GSP, 6.

This limitation is a general safeguard clause, which acts in addition to the safeguard clauses under the various common organizations established by the CAP. Article 32 of the 1986 GSP regulation reads,³²

"Where the Commission finds that imports of products benefiting from the treatment provided for in Articles 1, 3, 8, 13, 18 and 23 are imported into the Community in quantities or at prices which place or are likely to place Community producers of similar or directly competitive products at a serious disadvantage or create an unfavourable situation in the ACP States, the levying of customs duties applied within the Community may be re-introduced in whole or in part on imports of the products in question from the country or countries or territory or territories which are the cause of such disadvantage."

Although modelled on Article XIX of the GATT, this safeguard provision includes several features worthy of further comment. The interests of non-EEC countries (the ACP) may be taken into account. The provision does not allow for consultations between the EEC and the developing country causing the problems. The most interesting feature of the safeguard provision is that it may be selectively applied, unlike Article XIX of the GATT. Despite its novel features and potential scope of application, the safeguard clause has not been invoked with respect to the import of agricultural products.

In its review of the operation of the GSP scheme for the first ten years, the Commission recommended that no fundamental change should take place in the post-1980 period.³³ The scheme for the 1980's would take equal account of, on the one hand, the need to give effective help to the industrial development of developing

³² Op cit n18, 205.

³³ COM (80) 104 Guidelines for the EC's GSP in the post-1980 period.

countries and on the other, the "compelling" requirements of the EEC's commercial policy. The basis of the GSP as envisaged by UNCTAD seems to have been corrupted by the practices of donor countries. This is amply shown by the limitations imposed on the scope of the EEC's GSP by both domestic concerns and ACP interests. In its recommendations for the post-1980 GSP, the Commission recommended that the scheme should be based on the following principles,³⁴

- "—it should not involve complete exclusion, neither of a beneficiary, nor of a product nor sector;
- it should provide for a differential allocation of the preference according to product and country; and
- it should be aimed at according greater liberalization to the least developed developing countries."

These principles may be viewed as a re-interpretation of the objectives of the GSP as laid down in Resolution 21(II). The EEC, worried by the uneven use of preferential advantages, would seek ways within the GSP of promoting the interests of the poorest developing countries. Indeed, the fact that the GSP has not really assisted the poorest developing countries was one of the many criticisms voiced during the 1970's.³⁵ However, this was not by any means the major criticism. It is to these criticisms, both domestic and international that the next section turns.

³⁴ Ibid, 2.

³⁵ Murray "How Helpful is the GSP to developing countries" (1973) 83 Econ Journal 449, and Behnam "Development and Structures of the GSP's" (1975) 9 JWTL 442.

An Assessment of the GSP

The purpose of the GSP, as reflected in Resolution 21(II), was to increase the export earnings of developing countries, thereby promoting their industrialization and accelerating their rates of economic growth. Trade was to be generated by the grant of tariff preferences. These preferences would result in trade creation and to the extent that competition existed between developed and developing country exports, the margin of preference would result in trade diversion in favour of developing countries.

With respect to the EEC the expectations of trade creation and trade diversion, through the operation of the GSP, have not eventuated. The reasons for this include the following,³⁶

- i. Limited product coverage due to the demands of domestic farmers, processing industries and ACP States.
- ii. Reductions in the effectiveness of the product coverage through inadequate cuts in the tariff level and the retention of 'nuisance' tariffs.
- iii. The system of tariff quotas for certain products of export interest to the ACP
- iv. Further limitations on the product coverage through the use of import calendars and the continued presence of the variable levy.
- v. A restrictive series of rules of origin, which limit the potential for preferential trade, even taking into account the concessions to certain regional groups allowing for cumulative treatment.
- vi. The presence of a safeguard clause allowing for the re-imposition of the mfn duty should difficulties arise or possibly arise on either EEC or ACP markets.

³⁶ See Weston, Cable and Hewitt The EEC's GSP. Evaluations and Recommendations for Change. McQueen "Trade Preferences for Ldc's v. mfn tariff reductions: An Appraisal of the EEC's Scheme" (1979) 30 J Agr Econ 345.

The above factors indicate that the GSP is at present incapable of fulfilling the objectives of Resolution 21(II). Although the preferential area will increase as a result of the enlargement of the EEC to include Spain and Portugal, the overall effect of this enlargement on the GSP will be negative. Both countries have production structures similar to some GSP beneficiaries and on accession, these structures will benefit from EEC protection.³⁷

Criticisms of the EEC's GSP scheme revolve around the six factors outlined above. For example, although the EEC may be applauded for continually enlarging the scope of the agricultural product preference margins, those products of especial interest to the least developed countries are not included. This frustrates the objectives of the GSP which included special help for the least developed of the developing countries. Obviously, the product coverage needs to be extended. In its 1980 memorandum on the GSP for the post 1980 period, the Commission recognising the limited product coverage indicated that it could not be improved. It noted,³⁸

"Given the constraints of the CAP and the need to safeguard opportunities for access for the ACP countries, or in the case of certain products opportunities for the Mediterranean countries and the possibility of the accession of new countries, it would be inappropriate to widen the present product coverage."

The only possible avenue for improvements rests with the depth of the tariff cut on existing products and an increase in the level of tariff quotas for the five "sensitive products". This major limitation on the scope of the GSP affects the overall utility of the

³⁷ "The entrants and the EC's Preferential Trade Policies towards ldc's" in ed Donges et al The Second Enlargement of the European Community, 110, 127.

³⁸ Op cit n33, 14.

scheme. If this factor is added to the complex and administratively difficult rules of origin, it is not surprising that the rate of utilisation of the EEC's GSP is less than 40%.³⁹ Although the implementation of the GSP has added to the measures the EEC may take to aid the process of development, the concentration of EEC efforts on the ACP, and the Mediterranean, negates the useful effect of the GSP. The results of UNCTAD studies show that the percentage of mfn dutiable products covered by the Lomé Convention (99%), compares favourably with the percentage of GSP products covered as against mfn dutiable products (22%). With respect to the Maghreb countries, 94% of total dutiable agricultural exports are covered by the co-operation agreements as against 8% covered by the GSP. These statistics result in the following conclusion by one UNCTAD study,⁴⁰

"ACP and Maghreb countries face substantial competition from other preferential sources in the EEC market but have an important competitive advantage over a significant amount of mfn imports. GSP beneficiaries are the source of the smallest amount of this preferential competition."

Although this conclusion may be interpreted as vindicating the role of the ACP in the limitation of the GSP offer, it may also be read as proof that tariff preferences, by themselves, are not sufficient to stimulate trade. Whereas the Lomé Convention and the Mediterranean agreements both involve financial co-operation with the EEC, the GSP is merely a unilateral trade arrangement. Both the ACP and the Mediterranean benefit from this financial co-operation in the process of developing their trade.

The limited trade impact of preferences and the one-dimensional nature of the GSP raises the following question. How helpful is the

³⁹ Noted in TD/B/C.5/106.

⁴⁰ TD/B/C.5/49. Effects of the GSP on ldc's sharing their special tariff advantages as a result of the implementation of the system, II.

GSP to developing countries? Considering the fact that many developing countries export products which enter the EEC duty-free under mfn treatment or are excluded from preferential treatment under the GSP, the question of the real value of the GSP becomes very apposite. Talking about "the dismal picture" created by the GSP's efforts to meet its objectives, Murray observed,⁴¹

"The crucial question is, how far does the dismal picture derive from the fact that ldc's happen to export products which are outside the scope of the GSP and how far does it derive from an implicit stinginess on the part of the donor countries."

In her answer to the question, Murray stated that both elements were important. If this is so, then given these facts, a further question deserves consideration. Would the developing countries derive greater benefits from mfn tariff reductions than they would from the maintenance of GSP preferential advantages? In a 1977 study of this question, Baldwin and Murray identified three important benefits to developing countries as a result of mfn tariff reductions.⁴²

- i. trade creation, mfn reductions on many products coming under the GSP would generate trade creation which would not be subject to quantitative limitation;
- ii. trade expansion, mfn reductions would cover a broader range of products than the GSP schemes; and
- iii. trade equality; all countries would enjoy the benefits of mfn reductions, whereas GSP results in trade inequality."

⁴¹ Op cit n35, 454.

⁴² "Mfn Tariff Reductions and ldc trade benefits under the GSP." (1977) 87 Econ Journal 30, 31.

Given these benefits, perhaps the GSP ought to be abolished or, if not, substantially reformed. These options form the basis of the next section.

Abolition or Reform?

The case for abolition of the GSP rests on two pillars. Firstly, the potentially positive trade effects which would accrue to developing countries as a result of mfn tariff reductions. Secondly, the nature of the GSP itself. It has a limited product coverage. It has a system of complex and administratively difficult rules of origin. Its results are unequal, tending to benefit the most advanced, rather than the least advanced, developing countries. However, outright abolition, in the absence of a replacement, does not seem politically feasible. In its 1980 report on the EEC GSP, the House of Lords Select Committee on the European Communities noted,⁴³

"Tempting though outright abolition may be, the political case for continuing a Community scheme, however modified seems irrefutable; it may indeed be right to accept the argument that the agreement in the Tokyo Round to accept the permanent legitimation of the GSP, in which the European Community concurred, was, in itself, by implication, an undertaking to do so."

Given this conclusion, the only alternative is reform, the purpose of which would be to rid the scheme of its weaknesses and disadvantages. Two possible reform proposals will be elaborated, one internal, working within the confines of the existing scheme and the other external, involving a replacement of the present scheme.

⁴³ The Generalized Scheme of Tariff Preferences (61st Report 1979-80), 24.

Internal Reform. UNCTAD resolutions 77(III) and 96(IV) urge donor countries to consider the following improvements of the GSP.⁴⁴

- i. the extension of the coverage of the system to as many products of export interest to developing countries as possible taking into account their export needs and their desire to have all such products included in the scheme;
- ii. the extension of the coverage to include all processed and semi-processed agricultural products in chapter 1-24 BTN;
- iii. to provide duty free and quota free entry to imports from all developing countries under the GSP;
- iv. the adoption of as flexible and liberal an application as possible of the rules of the operation of the scheme;
- v. the harmonization and simplification of the rules of origin;
- vi. resort to safeguard action in exceptional circumstances only. Safeguard measures should be subject to prior international approval and review;
- vii. the elimination of all non-tariff barriers on products covered by the GSP; and finally,
- viii. the adoption of domestic policy measures which maximise the benefits of the GSP.

The adoption of these improvements would significantly affect the utility of the GSP and the pursuit of its objectives. However, the possibility for the wholesale adoption of these measures by the EEC must be doubted. In any internal reform of the GSP, the range of factors affecting the scope of the GSP will continue to have a dominant role. This is not to imply that efforts cannot be made to improve the nature of the EEC's GSP.

⁴⁴ See Volume I Part I Action Taken by the Conference; Proceedings of UNCTAD III (1972) and UNCTAD IV (1976).

Although the Commission has ruled out the possibility of an increased product coverage, improvements could be effected through increases in the depth of the tariff cuts on existing products. Two measures can be taken to achieve this goal. Firstly, all preferential tariffs of 5% or lower (the so-called nuisance tariffs) should be abolished. This would nearly double the number of products which would benefit from duty-free entry; from 81 products under the 1986 scheme to 156 products. The second measure would be the establishment of a percentage relationship between the mfn duty rate and the GSP preferential rate. If the GSP rate was to be set at 50% of the mfn duty rate, substantial trade diversion in favour of the GSP beneficiaries would eventuate. Honey with a mfn rate of 27% would have a new GSP preferential rate of 13.5% instead of the current rate of 25%. Another example is provided by other prepared meats (CCT chapters 16.02 B III b)1) which has a mfn rate of 26% would have a new GSP rate of 13% instead of the current margin of 17%. Considering the fact that these two products are on the list of the ten most important agricultural products covered by the scheme, the resulting trade impact could be very beneficial to developing country trade.⁴⁵ If the 50% reduction resulted in the GSP preferential rate falling below 5%, it would become eligible for elimination. The trade impact would be further increased.

Both these suggestions will be implemented only to the extent that their implementation does not harm either domestic or ACP interests. Given the fact that the product coverage will not be substantially extended and the restrictions currently imposed, either through import calendars or the variable component of levies, will remain the interests of these groups should not be detrimentally affected. For those products of special interest to the ACP States and currently subject to the tariff quotas, it is suggested that the quantitative limitations remain. The tariff

⁴⁵ See TD/B/C.5/105 for the List of most important agricultural products covered by the EEC Scheme.

quotas would be recalculated to include a percentage criterion which would allow for the annual growth of the quotas.

The remaining measures which could be taken to meet some of the improvements suggested by UNCTAD include the adoption of the Lomé rules of origin in replacement for the existing rules of origin. As indicated earlier, the process requirements under the Lomé rules are not as stringent as those under the GSP rules. The adoption of the Lomé rules would stimulate trade within the existing confines of the GSP rather than additional trade. The effectiveness of the new cumulative rules of origin remain unclear. However, the nature of these new rules are closely analogous to the cumulative treatment rules under the Lomé Convention and so further improvements in this area are limited. The final measure would be a purely cosmetic measure, a reformulation of the safeguard mechanisms, since the mechanisms have never been invoked. In line with the 1979 GATT declaration on Differential and More Favourable Treatment for Developing Countries, it is proposed that provision should be made for consultations before safeguard measures are taken.⁴⁶ If safeguard measures are taken, it is proposed that the EEC should compensate the developing country for the withdrawal of the preference.

The proposals outlined above would encourage greater utilization of the GSP. Whether or not, the new GSP system would be less complex and more equitable than the current system is a relevant question. If the above proposals are incapable of enhancing trade creation, expansion and equality, then external, not internal, reform is needed.

External Reform. If the effective implementation of the current GSP is hampered by the range of interests which must be taken into account, then a case for external reform exists. If the EEC

⁴⁶ Op cit n14. See also the proposal for a Code on Safeguard Measures, Part II s1 ch 2 of this paper.

could operate an effective system of preferences free from the constraints imposed by these interests then such a scheme merits consideration.

If the interests of the ACP (and Mediterranean) exporters are no longer to be limitations on the scope of the GSP, it is clear that a radical change is proposed. This change will retain the principle of preferential treatment and will endeavour to attain the objectives set for preferential tariff schemes by UNCTAD Resolution 21(II). The new scheme would introduce principles of graduation and differentiation, in its attempt to ensure trade creation, trade expansion and trade equality. Graduation involves the phasing out and elimination of preferential treatment for the more advanced developing countries and the progressive phasing-in of the generally applicable rules of international trade. The principle of graduation was recognised in the 1979 GATT Declaration of 1979 on Differential and More Favourable Treatment for Developing Countries. The purpose of graduation is to ensure the fuller participation of the economically advanced developing countries in international trade.⁴⁷ The associated process of differentiation would allow developed countries to offer different preferential margins to developing countries according to the latter's level of development. The new scheme proposed below would apply to all developing countries, irrespective of whether or not they have concluded an agreement with the EEC.

The new scheme would operate as follows. Based on IMF or World Bank figures, the EEC would establish four categories of countries, (a) the least developed, (b) the developing, (c) the economically advanced developing and (d) the developed countries. The developed countries would benefit from the mfn rate of duty unless they had a different arrangement with the EEC by virtue of a co-operation/free-trade agreement. The economically advanced developing countries would benefit from a

⁴⁷ Idem, part 7 of the Enabling Clause.

preferential rate of duty established between 60% and 80% of the mfn rate of duty. The developing countries would benefit from preferential rates set between 40% and 20% of the mfn rate of duty. All products from the least developed would enter duty free, and the product range would extend to all products of export interest to them. The product coverage would be progressively reduced. So in the case of developing countries certain products of primary importance to the least developed would be excluded and in the case of the economically advanced developing countries products of especial importance to the least developed and developed countries would be excluded. The principle of differentiation would be at work.

If a product is of importance to both the least advanced and the developing countries a system of import ceilings on the latter group's exports could be enforced. This would be enforced in such a way as to prevent the frustration of the objectives of the scheme; an annual percentage increase in the level of permissible exports could achieve this. A similar system could be operated if products of export interest to the least developed and developing countries coincide with those of the economically advanced developing countries. Under the current GSP certain products remain subject to the charge of a levy, additional duties or variable charges. This feature of the current system would remain. However, depending on the source of imports subject to these changes, a percentage of them would be repaid. In the case of the least developed all charges would be repaid. The purpose of this repayment would be to promote standards, especially those relating to packaging and labelling. In addition, a certain level of financial aid, perhaps from the existing non-associates budget, would be made available to the least developed countries to ensure that they derive maximum benefit from the new scheme. The developing and economically advanced developing countries would receive lower percentage rebates. Financial aid from the non-associates budget would be limited to the least developed and developing countries.

The repayments and the potential aid could be used to ensure that beneficiary countries comply with the rules of origin. The simplification of the current GSP's rules of origin is already taking place through the introduction of the harmonised system. The new rules of origin will combine the current List A and List B into a single list, which will express the working or processing carried out on non-originating materials that confers originating status. Any products not listed would automatically be subject only to the change of tariff heading criteria.⁴⁸ Although the need for a safeguard mechanism remains, it is suggested that its application be subject to the principle of differentiation. The EEC should endeavour not to invoke it against the least developed or the developing countries. If it does invoke it, the countries affected by the selective application of the mechanism, should receive financial compensation to offset the adverse effects of preference withdrawal. To apply the principles of graduation the system would be reviewed every year to ensure that each country is in the proper category. A Committee on Graduation, similar to the one suggested by Frank,⁴⁹ could be established to determine whether the economically advanced countries should continue to be subject to the system or should graduate into the mfn category.

The effect of this scheme on those countries presently associated with the EEC, either through the Lomé Convention or the Mediterranean agreements, would be significant. The margin of preferences currently enjoyed by them would be shared with other developing countries. The other instruments of co-operation in these various agreements would have to be strengthened to enable adjustments to be made to the sudden loss of preferences. The scheme outlined above constitutes an improvement on the

⁴⁸ TD/B/C.5/103 Transposition of the EC's GSP Origin Rules to take account of the introduction of the Harmonised System, 7.

⁴⁹ Frank "The 'Graduation' Issue for ldc's": (1979) 13 JWTL 289.

current GSP and offers hope that preferential tariff advantages can be used as a tool to aid the process of development. However,

given the marginal trade impact of preferential tariff treatment, these countries could be "compensated" by an increase in other

A tool for development?

In outlining the development of the concept of preferential treatment for developing countries and the evolution and limitations of the EEC's GSP, the limited trade impact of the GSP has been noted. Although the principle of preferential treatment is now so engrained that the abolition of the GSP is not a politically feasible solution to its problems, this does not imply that the scheme cannot be improved.

Two methods of improving the GSP were outlined above. An

internal option which works within the limitations which affect, and will continue to affect, the operation of the scheme. The merit of this proposal is that the range of interests currently protected by the GSP will continue to be afforded protection. The proposal would improve the effectiveness of the scheme, by increasing its rate of utilization. However, even this scheme would remain subject to the criticisms voiced of the current scheme; limited potential for either trade creation or trade expansion; and a degree of trade inequality through the unequal distribution of the benefits of the scheme.

For these reasons and the ineffectiveness of the current, or even internally reformed, GSP to meet the objectives set for it, a proposal involving a new scheme of preferences was made. By using the principles of graduation and differentiation the potential of the GSP increases. By applying the scheme to all developing countries, instead of a limited number of current GSP beneficiaries, this potential is further increased and an opportunity is afforded for the scheme to meet the objectives set for it by resolution 21(II). The radical nature of the scheme, compared with the internal reform proposal raises problems. The

most significant of these is the erosion of preferential margins currently enjoyed by countries associated with the EEC. However, given the marginal trade impact of preferential tariff treatment, these countries could be "compensated" by an increase in other forms of co-operation. It has been noted that,⁵⁰

"A substantial extension of the product coverage and scope for preferential treatment under the GSP could be realized only if the EEC agreed to fundamental changes in Lomé policy in areas other than market access."

To some extent the Lomé Convention and the GSP are complimentary and mutually reinforcing, reflecting as they do the regionalist as opposed to globalist orientation of the development co-operation policy debate within the EEC. Given this relationship, the proposals made in chapter 3 become apposite. It was noted that the ACP should strive for a degree of economic decoupling from the EEC. As part of this process it was proposed that greater emphasis be placed on measures other than preferences. If implemented, this proposal affords the EEC an opportunity to reform the GSP. As the European Parliament has noted,⁵¹

"The Community should recognize the rather disappointing economic results of the preference scheme so far and seek to operate the scheme with sufficient flexibility ... so as to integrate the preferential system into a true development policy rather than limiting action to minor adjustments in commercial policy."

⁵⁰ Frey Wouters The European Community and the Third World. The Lomé Convention and its impact (1980) 182.

⁵¹ EP DOC 1-545/80 Report on the proposals from the Commission to the Council for Regulations fixing the Community's 5-year scheme of generalized preferences for the period 1981-85, para.17 of a proposed Resolution. See also Doc 1-545/80/Annex the Opinion of the Committee on Agriculture.

By adopting the proposal made for the external reform of the GSP, the EEC would emphasise the fact that the GSP constitutes a basic instrument of development co-operation. A tool, to be used by the EEC, to assist the development of all developing countries would be created.

"As a result of the impetus given by the 1972 Paris Summit, the range of Community instruments has been increased considerably, but it is still open to question today whether Community activity in the development field has really acquired the coherence and consistency of a policy."

This part of the paper has concentrated on three areas of "EEC activity in the development field", the Lomé Convention, the provision of food aid and the GSP. Recalling the words of the Paris Summit the EEC was enjoined to "respond even more than in the past to the expectations of all the developing countries". It is relevant to enquire whether the EEC has so acted.

The Lomé Convention marks one attempt by the EEC to meet the expectations of developing countries. The Convention assures the ACP of preferential access to the EEC market for the majority of their products. Even for agricultural products the ACP have been given a level of preference as against all other suppliers. The Convention also includes provisions for the stabilization of export earnings and a guarantee of access for ACP exporters of sugar. In addition to these advantages, the ACP benefit from development aid dispersed through the operation of the EDP. The provision of food aid undoubtedly contributes to meeting the developing countries' need for food products to make up for domestic shortfalls. The shift of emphasis to food strategies represents an attempt to cure the source of the problem rather than the results of the problem. The food aid programme is aimed at the latter. The implementation of the GSP has helped several developing

CONCLUSION:

In the 1982 Memorandum on the EEC's development policy the Commission noted,¹

"As a result of the impetus given by the 1972 Paris Summit, the range of Community instruments has been increased considerably, but it is still open to question today whether Community activity in the development field has really acquired the coherence and consistency of a policy."

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¹ EC Bull Supp 5/82, 8.

countries to achieve rapid advances in the process of industrialization. Equally, it provides for market access for a number of products of export interest to developing countries.

Despite the impressive liturgy of EEC efforts in the development field, the basic question remains unanswered. The EEC has responded to the expectations of developing countries, but the contributions made have been piecemeal and their implementation is a source of discrimination within the developing countries. The Lomé Conventions, the major vehicle of the development co-operation policy of the EEC, have had a marginal impact on the process of development. As Hewitt concludes,²

"But if ... the Lomé Conventions have failed significantly to assist the development of the third world and provide a workable model even for European external policies toward the third world, it will have to be concluded that resources have been misallocated, policies misdirected and institutional learning ignored. If so there will be no Lomé IV."

The results of Lomé can either validate this conclusion or they can provide evidence of the unsuitability of the instruments of the Lomé Convention. This paper, after examining the various instruments of the Lomé Convention, noted several failings in the instruments of co-operation;

- the provision of preferences is not sufficient to encourage the development of trade;
- the provisions of Stabex act as a disincentive to the diversification of ACP economics and the production of food crops as opposed to export crops;

² "The Lomé Convention: Entering a Second Decade." (1985) 23 JCMS 95, 114.

— the sugar protocol, originally a bold instrument of development, has been blunted by the operation of the CAP.

Is it possible to attribute the source of these failings to the CAP? To some extent, the divergence of the aims pursued by the CAP and the development policy has resulted in a certain negative impact on the effectiveness of the latter. In relation to Lomé the ACP, primarily exporters of agricultural products, are detrimentally affected by the operation of the CAP. The operation of the CAP has also blunted the efficacy of the Sugar Protocol, restricted the product coverage of Stabex, and the generosity of the trade concessions. Critics have often accused the EEC of taking away with one hand what it has given with the other, a criticism which appears valid in light of the conclusions reached above.³ The European Parliament state that the main culprit is the CAP. They continued,⁴

"The two main accusations may be summarised as follows, it is protectionist and this hampers the agricultural development of developing countries, in particular their agricultural export potential; its price and guarantee system gives rise to a mounting structural surplus in a few key sectors, much of which is then disposed of as food aid."

The CAP hampers the development co-operation policies of the EEC. To misquote Claude Cheysson, the EEC is engaging in Sunday charity, rather than making development policy part and parcel of general policies.

³ See for example Coopers, Faber and Lof "EC's security of supply with raw materials and the interests of developing countries" in ed Von Geusau The Lomé Convention and the NIEO.

⁴ Doc 1-605/83 Report on the context of the future ACP-EEC Convention to follow Lomé II, 41.

Would a development co-operation policy as part and parcel of the EEC's general policies impose too great a burden on the EEC? The 1982 Commission Memorandum correctly points out,⁵

"The Community is not a multilateral development institution; being the expression of a European identity the Community's development policy embodies geographical preferences; although it is a manifestation of solidarity with certain developing countries, it also reflects the Community's economic interests in the organization of its relations with countries on which it depends for the security of its supplies and its markets."

In recognition of the fact that the EEC is not a multilateral development institution, the Commission, in its suggestions for approaches of EEC policy towards developing countries, recommend action to promote self-reliant development. The proposals made in this part of the paper reflect this approach. The developing countries will have to help themselves, the EEC will back up their efforts. For example, it was suggested that the ACP should shift the focus of their economic decisions from the EEC to other ACP States and other developing countries. It was proposed that this economic de-coupling could be achieved through regional commodity arrangements or the promotion of producer associations. The provisions of Stabex would remain, to allow for a smooth transition. It was also suggested that the ACP take advantage of the provisions of the Convention not only to promote intra-ACP trade and intra-ACP co-operation but also to promote food security through the use of food strategies. The food aid system currently operated by the EEC would serve as a strategic food reserve pending the transition to food security. The changing focus of ACP-EEC co-operation and the elimination of the need to restrict preferences to take account of the interests of the ACP, will allow improvements to be made to the GSP. Building on the

⁵ Op cit n1, 12.

work of the ACP and using the principles of graduation and differentiation, an effective instrument of development co-operation would result.

These new development policies would meet the expectations of developing countries; stable and remunerative prices for their commodities, through the operation of regional commodity arrangements and Stabex; food security, through the implementation of food strategies; and market access, through the operation of the GSP and improved intra-lde trade co-operation. Recalling the fact that the EEC is not a multilateral aid institution, it is not possible for it to meet all the expectations of developing countries. In multilateral trade institutions the EEC could encourage the realisation of the expectations of developing countries and contribute to the establishment of a more equitable world economic order.

The geographical focus of the EEC's development co-operation policies will remain on the ACP but the advantages accruing from the other proposed measures will ensure that this geographical focus is not the source of discrimination on the same level as before. One question remains to be answered. What impact will these changes have on the CAP?

The criticisms of the European Parliament, noted above, point to some potential answers. An amelioration of the protectionist nature of the policy and amendments to the price and guarantee system to eliminate recurring surpluses. However, one must question whether substantial reforms in the CAP will be brought about simply to make the development co-operation policies more effective. If the demands of the development policy and developing countries are not sufficient to effect reform of the CAP, other demands also point the way towards reform. International criticisms of the CAP, associate countries' complaints and more importantly, internal demands for reform, indicate that some reforms are required. The process of reform will allow the EEC to

ameliorate some of the internal criticisms of the CAP. Equally, it provides an opportunity for the EEC to prove that it is serious about a number of issues; the harmonious development of world trade; the demands of developing countries for greater use of commodity agreements; and, the need for genuine association and development co-operation policies. One method the EEC can choose to tackle these issues is a common agricultural trade policy. It is the elements of this policy which the final part of this paper addresses.

...has been in operation for a considerable period of time. An explicitly formulated agricultural trade policy yet exists. But why does the EEC need such a policy?

Various answers may be given to this question. The EEC is one of the largest trading blocs in the world. It is a substantial exporter and importer of agricultural products. It is the most important market for developing countries, for both agricultural and industrial products. Its member States have historical, political and economic ties with countries on every continent. A certain responsibility therefore devolves onto the EEC since its trade activities have a profound effect on other countries. Should the EEC move towards increased protectionism, in either industrial or agricultural trade, this would have damaging effects on other countries. Note the adverse impact the CAP has already had on world agricultural trade.

Should the EEC move towards the adoption of a liberal trade policy in agricultural products, the potential for economic growth, within the EEC and in many third countries, if realized, would lead to the greater development of world trade. However, such a step must be carefully considered because the primary responsibility of the EEC is its own citizens and especially its own farmers. For this reason, it is essential that as the EEC adopts a common agricultural trade policy, adaptations should be made to the CAP. This will ensure that the successful accomplishment of the task is spread equally, not only between the member States and the different

PART V: TOWARDS A COMMON AGRICULTURAL TRADE POLICY.

INTRODUCTION:

The introduction to this paper noted that the CAP is the most visible external symbol of the EEC's existence. The policy affects both agricultural exporting and importing countries. Although the CAP has been in operation for a considerable period of time, no explicitly formulated agricultural trade policy yet exists. But why does the EEC need such a policy?

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market organizations, but also between the various interested non-member States.

A starting point in the adaptation of the CAP is the realization of Utopian recommendations are not the answer. What is needed is a series of integrated policies to ensure the success of the evolutionary transition to a more liberal agricultural trade policy.

"The Common Agricultural Policy has had considerable success. But Europe must adapt its agricultural policy. The adjustment of regulations adopted after difficult political compromises will require a firm political will. It will demand difficult decisions on the part of all the EEC institutions and an acceptance on the part of all the social and professional groups involved."

Having realised the need for an adaptation of the policy, the next step in the process is to adapt the policy to meet the criticisms made of it. As the adaptation of the CAP will be part of the adoption of a common agricultural trade policy it is essential that external criticisms as well as internal criticisms of the policy be taken into account.

Criticisms of the CAP

Part I of this paper canvassed some criticisms of the CAP. The following criticisms were noted:

(1). The CAP does not include all agricultural produce listed in Annex II of the Treaty of Rome. The incomplete coverage of the CAP has resulted in some products of export interest to some member States being excluded from the scope of the policy. Alternatively, no agreement has been reached on extending the CAP to some products (e.g. potatoes).

1. Adjustment of the Common Agricultural Policy EC Bull. 1977, pp. 483, 1.

CHAPTER 1: THE COMMON AGRICULTURAL POLICY.

A starting point in the adaptation of the CAP is the realisation of the need for change. A 1983 Commission document on the CAP stated,¹

"The Common Agricultural Policy has had considerable success. But Europe must adapt its agricultural policy. The adjustment of regulations adopted after difficult political compromises will require a firm political will. It will demand difficult decisions on the part of all the EEC institutions and an acceptance on the part of all the social and professional groups involved."

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¹ Adjustment of the Common Agricultural Policy EC Bull Supp 4/83, 1.

(2). The operation of the common organizations of the market (COM's) gives rise to various inequities. It is maintained that the price policy of the COMs benefit northern producers of milk, sugar cereals to the detriment of southern producers of olive oil, wine and fruit and vegetables. The differences in the COM's reflect the nature of the products and the production structures of the original six member States. Further criticisms of the COM's relates to the absence of regulatory mechanisms which would prevent surplus accumulation. The open-ended nature of the intervention system allows farmers to produce as much as possible and imposes a responsibility on the EEC to buy this production. The operation of the price policy also results in the CAP benefitting larger producers. As a result, the CAP is a source of social and regional inequality within the EEC. These criticisms of the CAP stem from the original series of decisions on the nature of the policy and especially the decision to support farmer's income through prices rather than direct income aids.

(3). The impact of the CAP on the EEC budget has also been a source of criticism. It is maintained that the burden imposed by the CAP on public funds is too high in absolute terms and that it takes up too large a share of the budget. As a result of this large share the development of other common policies has been retarded. The consequence of this is an exacerbation of the social and regional inequalities caused by the CAP. Another result of the large share of the budget devoted to agriculture is that certain inequalities between the member States result. An inequality which is not lessened by the expenditure of the Community funds on ever larger structural surpluses.

These criticisms of the CAP can be answered. The share of agriculture in the EEC budget result from the measures needed to implement the objectives of the policy. The burden on public funds imposed by the CAP is no larger than the burdens imposed on the budgets of other countries by their agricultural policies. The concept of fair return does not form part of the EEC's budget

politics. The advantages of being a member State cannot be measured by subtracting budget contributions from budget receipts. However, the fact that these criticisms can be answered does not mean that the CAP should not be subject to constraints. The Commission has noted,²

"the adaptation of the policy cannot be made according to exclusively budgetary criteria but rather with the aim of fulfilling the fundamental objectives in the most cost-effective way."

The fundamental objectives of the CAP as interpreted by the Community institutions has resulted in many criticisms, yet these institutions do not advocate a re-interpretation of the objectives established in Article 39(1). Such a re-interpretation would encourage the EEC to examine the methods chosen to implement the objectives and the priority given to each objective. It would also encourage the EEC to consider the interests of third countries and the role these countries could play in the achievement of the CAP's objectives.

The Adaptation of the Policy

Adaptations to the CAP cannot possibly hope to meet all criticisms of the policy, for although the CAP contributes to the problem it is not the sole cause of the problem. For example, in the GATT, an improvement of the situation in the rules of international trade for agricultural products will require the active co-operation and assistance of other GATT Contracting Parties. However, adaptations to the CAP can play a useful role in this process.

The parameters for the adaptation of the CAP have been established by the Commission. Any adaptation must not question

² Idem.

the three principles on which the policy is based; common prices, Community preference and common financing. The CAP must continue to be centred on the following three instruments:

- an economic structure based on the market organizations;
- structural aids to enable qualified farmers to implement measures of adaptation; and finally,
- aids to individuals in marginal cases in which farmers cannot adapt and/or it is felt desirable to maintain a farming population.

What is envisaged is the maintenance of the principles of the CAP and the past successes of the policy. However, a new principle has been introduced which it is hoped will meet some of the criticisms of the policy. As the Commission conclude,³

"... the real benefits of the policy, not only to farmers through secure prices and to consumers through secure supplies but also to European integration as a whole, can and must be maintained through the more general introduction of a fourth principle, namely some element of financial responsibility of producers for the disposal of production in excess of an agreed quantity."

This principle of producer responsibility aims to curb what some see as the worst excesses of the policy; the expenditure of budgetary resources on ever increasing structural surpluses. The principle that producers should bear some responsibility for the creation of surpluses is not new. It was first suggested by the Commission in 1973 and it has been the basis of the common organization of the sugar market since its inception. The introduction, and extension, of the principle is a recognition that the open-ended nature of the intervention system was imposing a financial burden on the EEC that it could not, and would not continue to, meet. The purpose of the principle is not to limit

³ COM (81) 50 Commission proposals on the fixing of prices for certain agricultural production and on certain related measures, 2.

production levels but establish a threshold on EEC expenditure, thereby rationalizing the policy.

To implement the principle of producer responsibility the guarantee threshold concept was introduced. There are five variations on this concept, depending on the product concerned. They are:⁴

- (a) limiting the increase in the target or intervention price if production exceeds a certain figure;
- (b) reducing the amount of aid available under the CAP if production exceeds the threshold;
- (c) imposing an overall limit on the amount of aid payable in connection with the market organization;
- (d) asking producers to contribute, via a levy, towards the cost of disposing of any additional production (or towards the net export costs); and
- (e) imposing a production ceiling on each member State or undertaking.

Each of these variations or combinations of them has been employed by the EEC in its effort to exert market discipline on producers.

In the cereals sector, the guarantee threshold is set for each year by averaging production in the three previous years. If production exceeds the threshold the intervention price is reduced for every million tonnes of the excess, subject to a maximum reduction. Guarantee thresholds have also been established for processed fruit and vegetables, rape seed, sunflower seed, olive oil, wine, cotton and certain fruits preserved in syrup. The EEC has adapted the guarantee threshold concept to the particular needs of the product in over-supply. One product, milk, is illustrative of the success of the new fourth principle. The original proposal for an element of producer responsibility in the CAP was

⁴ See Green Europe No.203. The Guarantee Threshold System, 9 and EC Bull Supp 4/83 op cit n 1, 8.

directed towards the situation in the milk COM.⁵ In 1973, taking into account the continuing problem of surplus production, the Commission proposed that milk producers should pay a temporary production levy on deliveries to dairies. In 1977, the Council finally accepted the need for producer responsibility in the milk sector. The resulting co-responsibility levy was to be used in the disposal of surpluses.

This measure did not have any significant impact on production as producers could merely increase production to incorporate the penalty imposed by the levy. In an effort to arrest production increases the Commission proposed that a super-levy be charged on milk delivered to dairies in excess of agreed quantities. In 1982 the Council adopted this measure, the quantity was set at the level of 1981 deliveries plus 0.5%. If the quantities actually delivered exceeded the threshold, the intervention price would be reduced the following year by an amount corresponding to the excess delivered. This occurred in 1983 when the intervention price was reduced by 3%. Faced with an even greater percentage decrease in 1984, the Council adopted a new type of guarantee threshold. Instead of an annual guarantee threshold, a five year guarantee threshold was established. No provision was made for annual increases. This system penalises producers whose deliveries to dairies exceed the level of their assigned quotas, rather than imposing a standard reduction in the intervention price.⁶

The introduction of the concept of producer responsibility has been accompanied by the use of a prudent (restrictive) price policy. This limits the annual increase in the common prices by

⁵ See Newsletter of the CAP Special Issue: Memorandum Agriculture, 1973-78, 12.

⁶ See Green Europe No.207; Milk. The Quota System for a description of past and current efforts to control milk production. See also Council Regs.13-35, 1340/86 OJ L 119/19 1986.

taking into account not only the agricultural market but also the budgetary situation and other general economic factors. The prudent price policy, like the guarantee threshold system, is an attempt by the EEC to force farmers to take the reality of the market place into account in their decision-making processes.

The Impact of Adaptation

The adaptation of the CAP has proceeded along the lines of the prudent price policy and the guarantee threshold concept. In this way the adaptation has met some of the internal criticisms of the CAP.

A method has been found to keep the budgetary consequences of the policy in check. It remains to be seen whether the member States and their farmers will abide by the policy goal of limiting the costs of the CAP. The CAP has, irrespective of the prudent price policy and the guarantee threshold system, reached a turning point. A point which demands that a greater role should be played by the structural policy. Increased resources will have to be devoted to this policy as a result of the 1986 enlargement of the EEC. More resources should be devoted to help low-income farmers or farmers in less-favoured areas, as it is these farmers who need the most assistance. Resources to other common policies will also have to be increased as the EEC becomes a less homogeneous group.

The current adaptation of the CAP does not assure its future viability. The concept of guarantee thresholds has been criticised on a general and particular level. On the general level it is maintained that guarantee thresholds serve to freeze the current patterns of production. This is similar to criticisms of the effects of international commodity arrangements. The particular implementation of the concept has also been criticised. For example, in the cereals sector the guarantee threshold is

established by averaging production in the previous three years. Although the intervention price may be reduced if production exceeds the threshold in any particular year, this production is still taken into account in setting future guarantee thresholds. Guarantee thresholds institutionalise structural surpluses rather than eradicate the cause of these surpluses. This criticism is particularly apposite to the guarantee threshold in the milk sector. The level of the quota is set well above EEC consumption, and even given exports of milk products, a surplus may still accumulate. To counter this criticism and criticisms of inflexibility, the 1986 agricultural price negotiations accepted a voluntary scheme for buying up quotas and a compulsory mechanism to achieve a three per cent reduction in the level of the quotas over a two year period.

The credibility of the prudent price policy and the guarantee threshold concept as the method to achieve reform of the CAP was called into question during the 1985 price negotiations. The reluctance of Germany to accept successive and quasi-automatic price cuts to achieve balance in the cereals sector, raises questions about the continuing acceptability of this solution. As Vasey notes,⁷

"It will become increasingly difficult, if not impossible, to get agreement in the Council on common prices in future as long as these are still supposed to serve conflicting purposes: that is, the economic function of adjusting supply and demand and the social function of guaranteeing a reasonable income for small and medium-sized family farms."

As a temporary measure the adaptation of the CAP through the use of a prudent price policy and the concept of guarantee thresholds may be acceptable internally. Externally, the situation remains as before. The introduction of guarantee thresholds

⁷ "The 1985 Farm Price Negotiations and Reform of the CAP" (1985) 22 CML Rev 649, 670.

merely limits the level of budgetary expenditure on agricultural products. Recalling the fact that the common organization of the sugar market has always had this feature and remembering the disruption caused by EEC sugar exports, it must be doubted if any significant trade advantages will accrue to third countries as a result of this adaptation of the CAP. Indeed, the Commission is actually proposing measures which would exacerbate the situation third countries are faced with as a result of the CAP. On external trade they recommend,⁸

- international co-operation with the principal exporting countries to prevent the deterioration of world prices;
- the development of a policy at EEC level for promoting exports on a sound economic basis;
- the exercise of the EEC's international rights, particularly in GATT, for the revision of the external protection system in those cases where the EEC is taking measures to limit its own production.

The Commission envisages increased exports and decreased imports, hardly a situation which would meet the external criticisms of the CAP. The impact of adaptation has been entirely internal. The means chosen reflect the internal criticisms of the policy. In this process it is obvious that external criticisms cannot be catered for. The process of adaptation cannot take place in a vacuum, the internal changes must reflect on the EEC's ability to trade with other countries not only in agricultural products but also in industrial products. Faced with an increasingly protectionist CAP, the impact on the EEC's exports of industrial products could be very detrimental to the EEC. There is a need to integrate the CAP with the common commercial policy and to attune the CAP to the demands of the industrial sector of the EEC. It would be the role of the Common Agricultural Trade Policy to

⁸ E.g. EC Bull Supp 4/83 op cit n 1, 10.

effect this integration, thereby promoting the entire economic interests of the EEC.

The External Environment

The adaptation of the CAP has been, and will continue to be, carried out without regard to the interests of third countries. If the adaptation has affected these countries, it has a negative impact, decreasing their level of trade with the Community rather than increasing it.

Part II of this paper in the discussion of the EEC in the International Arena, noted that international efforts to achieve agricultural trade liberalization are based on a misconception. This misconception is that liberalization is desirable. By their nature domestic agricultural programmes are inherently protectionist. If this is so, then future hopes of trade liberalization are bleak. The external operation of the CAP reflects the protectionist nature of domestic agricultural programmes.

In relation to the GATT, the following effects of the CAP were noted. Deprived of the possibility of the legitimate use of Article XI to impose quantitative restrictions on imports, the Community has resorted to the use of non-tariff barriers. Whilst the 1979 Code on Technical Barriers to Trade tackles the problem of non-tariff barriers, it is only the start of the process. Given the increased importance of these barriers to trade and their role in the domestic agricultural programmes of the Contracting Parties, the process of liberalization in this area will be a long one. The reason is that GATT work in this area constitutes a direct assault on an important element of agricultural protectionism. This reasoning is also reflected in GATT attempts to monitor the effects of export subsidies and to enforce the provisions of Article XVI:3. The GATT attempts to make progress in this area have been weakened by the prevalence and market relevance of these measures.

In relation to safeguard measures (Article XIX GATT) a similar problem manifests itself. However, this provision holds the key to a more effective GATT. The major criticism of Article XIX is the need to ensure reciprocity and non-discrimination in the application of safeguard measures. These concepts, particularly reciprocity, are not appropriate to agricultural trade relations. The discussions of the US waiver for its domestic agricultural policy indicates that the Contracting Parties and the GATT would be better served by employing the concept of "a balance of rights and obligations". The use of this concept could be the basis of future advances in the process of liberalization, because it accepts the protectionist nature of domestic agricultural programmes.

Given the desire to have some international framework, it is obvious that, despite its failings, the GATT remains relevant. The means of progress is to work within the rules laid down and seek to improve those rules to achieve a "balance" between the rights and obligations of all Contracting Parties. Progress in this area will have to reflect, and respect, the economic, social and political demands which lie behind domestic agricultural programmes and the varying methods chosen by the Contracting Parties to satisfy these demands.

Progress in the area of commodities must also acknowledge the influence of these demands. The international consensus which launched the NIEO has disappeared. The incentive for developed countries to conclude ICA's (the fear that the experience with oil would be replicated in other commodities) has proved not to be a powerful incentive. Moreover, the rhetoric of the 1970's appears anachronistic in the 1980's. The expectations of the developing countries that the developed countries would adopt altruistic policies towards them were unfounded. The collective, self-reliant attitude which bound the developing countries together in the 1970's has dissipated in the harsher economic climate of the 1980's. In a sense, developing countries have been the authors of

their own misfortunes, by relying too much on their supposed "commodity power" whilst ignoring domestic policy changes which could have encouraged greater development.

However, this does not mean that there is no role for ICA's in the international trading environment. Such agreements have a positive role to play, a role which remained largely unexplored in all the rhetoric of the 1970's. These agreements can assist the process of development, stabilise international trade and allow for the structural adjustment of domestic agricultural policies. The impact of the 1970's was to frighten developed countries away from their use. So any new arrangement or programme leading to the conclusion of ICA's will have to be gradual/evolutionary.

The gradualism which will mark future ICA's is evident in the EEC Development Co-operation Policies. The examination of these policies, although showing a convergence of the aims of the policies, illustrates a divergence of the methods used to achieve these aims. The influence of the CAP on these methods has been essentially negative and it constitutes a source of discrimination within this group of countries. This aspect of discrimination is also evident in the relations established with several developed countries. The number and scope of the agreements concluded by the EEC gives rise to doubts as to whether or not it is possible to have a coherent external policy. These doubts are further strengthened by the range of agricultural concessions given to the countries who have a relationship with the Community.

Once again, the protectionist nature of the CAP is at fault. If changes to the external impact of the CAP are suggested, what are the implications of such changes? The basic position to be adopted by the EEC is either Liberalism or Protectionism. The EEC has not benefitted externally from the adoption of a protectionist stance, and so, it could be argued that it should adopt a liberalist stance. However, this argument ignores the reasons for the protectionist position; the social, economic and political forces

behind the CAP. Any moves towards free trade must take account of these interests and the move to a position of reluctant liberalism would accomplish this. This position entails the adoption of a Common Agricultural Trade Policy which will open up the EEC market to exports from third countries and maintain a level of protection for domestic producers. Of necessity, the implementation of such a policy would be evolutionary. The overall purpose would be to achieve a balance between the rights and obligations the EEC has to its own farmers and those the EEC has to the international community.

external criticisms. However, the aim of this latter policy is not simply to establish "good relations" with third countries but to provide a means whereby the CAP may be integrated with other EEC policies. By doing this a vehicle for economic growth within the EEC and outside the EEC will be set in motion.

Council Regulation on the Principles and Mechanisms of the Common Agricultural Trade Policy.

The Council of the European Communities

Having regard to the Treaty establishing the European Economic Community and in particular Articles 43, 113 and 235 thereof

Whereas Article 38 of the Treaty establishing the EC provides for the establishment of a common agricultural policy among the member States; whereas the objectives of this policy enumerated in Article 39 of the Treaty establishing the EC have been achieved through the use of common organizations of the market; whereas the CAP is based on the unquestionable principles of common prices, Community preference and common financing; whereas problems with the CAP have required the introduction of a fourth principle, producer responsibility; whereas the EEC reaffirms the objectives and principles of the CAP; whereas the EEC recognizes that the process of adaptation of the CAP has just started and the purpose of this adaptation is to integrate the CAP with other common policies, especially the Common Commercial Policy.

CHAPTER 2: A COMMON AGRICULTURAL TRADE POLICY (CATP).

The EEC has reached a turning point in its history, with the accession of Spain and Portugal the number of member States has doubled. A policy drawn up to meet the needs of the six now has to contend with the demands of another six member States. The process of adaptation has already started to meet internal criticisms of the policy. The adoption of a common agricultural trade policy will serve to meet the external criticisms. However, the aim of this latter policy is not simply to establish "good relations" with third countries but to provide a means whereby the CAP may be integrated with other EEC policies. By doing this a vehicle for economic growth within the EEC and outside the EEC will be set in motion.

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Whereas Article 110 of the Treaty establishing the EC directs the member States to contribute, in the common interest to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers; whereas a lack of convergence exists between Article 110 and the CAP; whereas the EEC recognises the responsibility it has in international trade; whereas the EEC reaffirms its determination to encourage the development of international trade especially in agricultural products.

Whereas the EEC re-affirms the objectives of the GATT and the importance of these objectives; whereas the EEC recognizes that the provisions of the GATT do not apply with equal force to both agricultural and industrial products; whereas the EEC realises the effects which the operation of the CAP has had on the implementation of the GATT; whereas the EEC recognises its determination to eliminate these adverse effects by adhering to a greater extent to the rules of GATT; whereas the efforts of the EEC in this area must be reciprocated by other Contracting Parties to the GATT.

Whereas the EEC recognises the problems presented by continuing underdevelopment in the world; whereas the EEC reaffirms its determination to assist the process of development; whereas the EEC continues to work for the full implementation of UNCTAD Resolution 93(IV), recognising the valuable role commodity arrangements may play in the process of development; whereas the EEC remains willing to enter into such agreements, even though they may involve adaptations to the CAP; whereas EEC efforts to assist the process of development through the Lomé Conventions should be continued and strengthened; whereas the food aid operations of the EEC should continue and should encourage the development of food self-sufficiency; whereas the EEC reaffirms its commitment to UNCTAD Resolution 21(II) through the continuing operation of the generalised system of preferences; whereas EEC efforts in the field of development could be better co-ordinated through the adoption of a Common Agricultural Trade Policy.

Whereas the EEC recognises the importance of its historical links with the countries of the Mediterranean; whereas the EEC remains resolved to establish wide-ranging co-operation with these countries; whereas the EEC realises the importance of its role in the Mediterranean and affirms its intention to play this role; whereas the recent enlargement of the EEC provides an

opportunity to review the EEC's role in the Mediterranean; whereas enlargement provides a similar opportunity with respect to the countries of Latin America, Asia and EFTA; whereas the EEC realises the importance of this opportunity and will endeavour in the context of the Common Agricultural Trade Policy to meet the aspirations of these countries.

Whereas the EEC recognises the importance of harmonious relations with other developed countries and the impact of the CAP on these relations; whereas these relations should be promoted in the context of the GATT; whereas the Common Agricultural Trade Policy will ease the tensions currently experienced in these relations.

Whereas the adoption of the common agricultural trade policy will require adaptations to the CAP; whereas these adaptations should not disturb the objectives and principles of the CAP and be carried out progressively to ensure the minimisation of disruptions which may be caused; whereas the adoption of a common agricultural trade policy will encourage the integration of the CAP with other EEC policies.

HAS RESOLVED AS FOLLOWS

Part I — General

Article 1- Objectives.

- (1) The progressive alignment of the objectives of the Common Agricultural Policy with other EEC policies, especially the Common Commercial Policy, shall be achieved through the adoption of the Common Agricultural Trade Policy outlined in this Regulation.
- (2) The overall objectives of the Common Agricultural Trade policy shall be;
 - (a) the adaptation of the CAP to allow for greater impact of world market conditions; and
 - (b) the liberalisation of trade in agricultural products through international measures and bilateral agricultural concessions.
- (3) The Common Agricultural Trade Policy shall have three areas of operation;

- (a) international, in the organizations of GATT and UNCTAD;
- (b) plurilateral, in the EEC's development policy; and,
- (c) bilateral, in relations between the EEC and the countries of the Mediterranean, EFTA and the CMEA.

Article 2 — Safeguards.

- (1) Should the application of the Common Agricultural Trade Policy result in serious disturbance in a sector of the economy of the EEC or of one or more of the member States, the Council may take, or may authorise the member State concerned to take, safeguard measures.
- (2) Such safeguard measures shall not be used for protectionist purposes or to hamper structural readjustment.
- (3) Safeguard measures shall be restricted to those which would least disturb trade between the EEC or the member State and the third country concerned. Such measures shall not frustrate the objectives of the Common Agricultural Trade Policy nor must they exceed the scope of what is strictly necessary to remedy the difficulties that have arisen.
- (4) The Commission shall monitor the implementation of this Provision.

PART II. INTERNATIONAL ASPECTS OF THE CATP.

Article 3 — Objectives.

- (1) In reaffirming the objectives of the international organizations of GATT and UNCTAD, the CATP shall seek to achieve
 - (a) the progressive liberalization of world trade in agricultural products; and
 - (b) the achievement of fair and equitable prices for all internationally-traded agricultural products.
- (2) In the process of achieving these objectives the EEC recognises that reciprocity is an essential element of any agreement.

Article 4 — The GATT.

- (1) The EEC reaffirms the role of GATT rules and through the CATP will endeavour to make these rules more applicable to trade in agricultural products. Specific actions are laid down in the remaining provisions of this Article.
- (2) In consultation with other Contracting Parties, the EEC undertakes to reduce the level of external protection afforded to domestic producers through the use of the variable levy system.
- (3) In the area of export subsidies, in consultation with other Contracting Parties, the EEC urges that the following action be taken:
 - (a) the establishment within the Subsidies Committee of product sub-committees. These committees will collect and collate evidence of export subsidisation; and
 - (b) the reports of these sub-committees shall be used in negotiations leading to the reduction of export subsidisation.

No action will be taken by the EEC, within the context of the CATP, in relation to export subsidies unless this action is part of a reciprocal agreement between the Contracting Parties.
- (4) The EEC, in the context of the CATP, will urge the end of measures which contravene Article XIX of the GATT. In consultation with other Contracting Parties, the EEC shall consider adjustments to the provisions of Article XIX which:
 - (a) meets the requirements established by the GATT ministerial meeting of 1982 for a new safeguard code; and
 - (b) allows for the use of selective safeguard measures.

No action will be taken by the EEC, within the context of the CATP unless it is as a result of a reciprocal agreement between the Contracting Parties.

Article 5 — Multilateral Trade Negotiations.

- (1) The operation of the CATP in multilateral trade negotiations should focus on achieving a balance of rights and obligations within the framework of the GATT rather than the pursuit of full reciprocity. For this reason negotiations should be at a similar rate in all product sectors.

- (2) Multilateral Trade Negotiations should include negotiations on Codes of Conduct on the Operation of Domestic Agricultural Policies. Such negotiations in the context of the CATP would seek to achieve the adaptation of the domestic agricultural policies of all Contracting Parties so as to minimise distortions in international trade.
- (3) No Code on Conduct shall be acceptable under the CATP unless it achieves a balance of rights and obligations within the framework of the GATT.

Article 6 — UNCTAD

- (1) The EEC recognises the value of international commodity agreements in the stabilisation of world agricultural markets. The following provisions shall govern the CATP in this area.
- (2) The EEC shall consult with other countries in efforts to promote the following types of commodity agreements:
- (a) Commodity Co-operation Agreements;
 - (b) Multilateral Contract Commodity Agreements; and
 - (c) International commodity Control Agreements.
- The choice of agreement will be dependent on the objectives which are to be promoted.
- (3) All commodities should, if subject to price fluctuations which threaten the financial stability of the CAP, be subject to a form of commodity arrangement.
- (4) EEC participation in commodity agreements shall serve the objectives of the CAP and the development co-operation policy.

PART III: PLURILATERAL RELATIONS.

Article 7 — Objectives.

- (1) The CATP should seek to achieve a reconciliation between the objectives of the CAP and the objectives of the development co-operation policy pursued by the EEC.

- (2) In view of the present development needs the EEC should not require equivalent concessions from either the least developed or developing countries. Furthermore, the provisions of Article 2 of this declaration should not be applied against the least developed countries and should be invoked only in exceptional circumstances against developing countries.

Article 10 — The Generalized System of Preferences.

- (1) The CATP in relation to the GSP will seek to encourage trade creation.

Article 8 — The Lomé Convention.

- (1) The CATP should continue to recognise the historical links between the EEC and the ACP. Future relations between these two groups, in the context of the CATP, will be based on the following provisions of this Article and Articles 9 and 10.

- (2) The EEC and the ACP shall conclude either:
- (a) a regional commodity arrangement; or
 - (b) an arrangement to support the goals of regional producer associations.

The purpose of these arrangements will be to achieve fair, equitable and remunerative prices for ACP commodities.

- (3) The provisions of the stabilization of export earnings system will be amended to provide;
- (a) support for the policies outlined in paragraph (2) above;
 - (b) the development of intra-ACP trade; and
 - (c) the development of intra-lde trade.
- (4) The provisions of Protocol 3 of the first Lomé Convention will be amended to allow for the removal of the EEC obligation to import ACP sugar.

- (5) This Article and Article 10 shall be the subject of negotiations between the EEC and the ACP, with a view to entering into effect in 1990.

Article 9 — Food aid policy.

- (1) The CATP should endeavour to continue the food aid operations of the EEC. However, greater emphasis should be given to the use of counterpart funds and triangular operations.

- (2) The CATP should encourage developing countries efforts to achieve food self-sufficiency through the adoption of national or regional food strategies. This policy shall concentrate on those countries linked to the EEC by the Lomé Convention.

Article 10 — The Generalised System of Preferences.

- (1) The CATP in relation to the GSP will seek to encourage trade creation, trade expansion and trade equality through the introduction of the principles of graduation and differentiation. The following principles shall govern the future of the GSP.
- (2) The GSP will apply to all countries, irrespective of their past associations with the EEC. Beneficiaries of the scheme will be divided into three groups, least developed, developing and economically advanced developing countries.
- (3) Applying the principle of differentiation each group will derive differing benefits relating to the depth of the tariff cut, product coverage, financial assistance and the use of the safeguard provisions.
- (4) Applying the principle of graduation, the economically advanced beneficiaries may be excluded from the scheme and required to abide by the rules of GATT.
- (5) The implementation of the above proposals is dependent on a satisfactory conclusion to the negotiations referred to in Article 8(5) of this Regulation.

PART IV: BILATERAL RELATIONS.

Article 11 — Objectives.

- (1) The objectives of the CATP in the field of bilateral relations is to ensure co-ordination between the objectives of the CAP and those of the EEC policies on energy resources, technology and political co-operation.
- (2) This part relates to EEC relations with the Mediterranean, EFTA and CMEA countries. The operation of the CATP as it affects other developed countries (Australia, Canada, New

Zealand and the United States) will be effected under Article 5 of this Declaration.

Article 12 — The Mediterranean.

- (1) The following provisions shall govern the CATP in relation to the Mediterranean.
- (2) The EEC shall establish a forum for the discussion of political and energy problems with the Mediterranean and Arab States.
- (3) The EEC shall, in consultation with the countries of the Mediterranean develop a regional development policy. This shall represent an extension and improvement of the EEC's integrated Mediterranean policy. The aim of the policy will be to promote industrialization and diversification of the economies of all States bordering on the Mediterranean.
- (4) In consultation with the Mediterranean countries and mindful of the disadvantages suffered by EEC producers, the EEC shall adopt a Mediterranean Trade Policy. The purpose of this policy will be to promote complementarity of production.

Article 13 — EFTA.

The CATP shall promote the growth of agricultural trade by the conclusion of bilateral agricultural agreements between the EEC and individual EFTA countries. These arrangements should be reciprocal.

Article 14 — CMEA.

The CATP shall foster the harmonious development of trade between the EEC and the CMEA and ensure that the principle of reciprocity is respected in trade arrangements.

PART V: INTERNAL ADAPTATIONS.

Article 15 — Objectives.

- (1) Internal adaptation of the CAP shall endeavour to support the objectives of the CATP.

- (2) The Commission shall monitor the implementation of the CATP. It shall present an annual report to the Council outlining:

- (a) the impact of the policy on domestic producers, especially those farmers in the less-favoured areas;
- (b) the impact of the policy on consumers;
- (c) the impact of the policy on budgetary expenditure on agricultural products; and
- (d) the measures which could be taken on the EEC level, in areas other than agricultural which would support the objectives of the CATP.

Article 16 — Internal Policy.

- (1) The EEC shall maintain the prudent price policy and alleviate problems in the agricultural sector by the use of either structural policy or direct income aids.
- (2) The EEC shall maintain the system of guarantee thresholds and ensure that the system works effectively.

Article 17 — External Policy.

- (1) The EEC shall adopt a policy to promote the export of agricultural products, without excessive reliance on the export refund system.
- (2) The EEC shall actively promote the conclusion of multiannual supply agreements for agricultural products with those developing countries who have expressed an interest in such agreements.
- (3) These agreements should be concluded within the framework of the CAP and should not encourage the development of surpluses.

Article 18 — Other policies.

The Commission shall present proposals which would lead to the greater co-ordination and harmonization of Member States policies which affect the operation of the CATP. Particular emphasis should be given to development aid policies, energy policies, technology policies and monetary policies.

CONCLUSION: UTOPIAN RECOMMENDATIONS OR AN INTEGRATED POLICY?

In 1973, the Heads of State and Government of the Member States of the European Community declared,⁹

"The EEC, the world's largest trading group could not be a closed economic unity. It has close links with the rest of the world as regards its supplies and market outlets. For this reason the EEC, while remaining in control of its own trading policies, intends to exert a positive influence on world economic relations with a view to the greater well being of all."

In the year's following this declaration, the EEC rather than exerting a positive influence on world economic relations has in fact exerted a negative influence. The primary reason for this is the operation of the CAP. It has acted as a negative influence in the institutions of the GATT and UNCTAD. It has frustrated the objectives of the Mediterranean agreements concluded by the EEC. It has not assisted the process of development either through the Lomé Conventions or the operations of the GSP. The adoption of a common agricultural trade policy would alleviate the adverse impact of the CAP, while leaving the EEC in control of the CAP, and at the same time contribute to improved world economic conditions.

An examination of the provisions of the policy supports this assertion. The overall objectives of the policy will be the adaptation of the CAP to allow for greater impact of world market conditions and the liberalization of international trade in agricultural products. In recognition of the existing protectionist nature of the policy, these objectives should be implemented

⁹ European Political Co-operation (3rd ed 1977), 69, 71.

gradually and the internal adaptation of the CAP should be consistent with the new trade policy. For these reasons, Articles 15 and 16 envisage the re-orientation of the CAP towards a structural policy, a re-orientation which is supported by the wording of Article 39 EEC. Although price policy for a time will continue to dominate the CAP, gradually a system of deficiency payments and structural measures will begin to overshadow the price policy. During an interim period, the EEC would be able to protect its farmers through the use of safeguard measures. However, such safeguard measures should neither frustrate the objectives of the trade policy nor hamper the process of structural adjustment. The gradual re-adjustment of the CAP would be in accordance with the conclusions of the 1958 Harberler Report, and would encourage adjustments to the international trading environment.

Turning to this international environment, the provisions of the policy suggest a new direction for both the GATT and UNCTAD. Although the GATT has failed to live up to expectations, it should not be dismissed. Reform of the rules is possible and the framework of the GATT would continue to be relevant. Article 4 of the proposal includes several suggestions for achieving a better GATT. Each of the proposals made is dependent on a new concept of reciprocity. This new concept of reciprocity will involve the establishment of a balance of the rights and obligations of the Contracting Parties, in relation to all aspects of the work of the GATT. By adopting this new concept of reciprocity progress will be possible in the area of quantitative restrictions, export subsidies and safeguard measures, as the new concept recognises the protectionist nature of domestic agricultural policies. To supplement changes which will occur in the rules of the GATT, Article 5 provides for multilateral trade negotiations. The end product of these negotiations would be agreements on Codes of Conduct on the Operation of Domestic Agricultural Policies. These Codes, in addition to the new GATT rules, would ameliorate the current distortions of international agricultural trade.

It is not suggested that total free trade should be the purpose of the GATT's work. Rather, it is suggested that the GATT should recognise the parameters within which it operates, and seek to promote the best possible results within those parameters.

The second aspect of the international operation of the trade policy is the EEC policy in relation to UNCTAD and Commodity trade. Given the impact of the rhetoric of the 1970s on the developed countries perception of ICA's, Article 6 is a conservative proposal. The need for a conservative proposal is strengthened when the nature of domestic agricultural programmes is examined. The suggested means of progress in this area is the conclusion of one of three types of agreement; a Commodity Co-operation Agreement; a Multilateral Contract Commodity Agreement; and an International Commodity Control Agreement. Each of the agreements have differing sets of objectives and methods to achieve these objectives. In addition the suggested progression from CCA to ICCA involves a gradual increase in the degree of interference with domestic agricultural policies. Only in the final stage of Commodity regulation will there be an important element of structural re-adjustment of domestic production. The proposal encourages commodity agreements whilst alleviating developed countries concerns about the impact of these agreements on their domestic policies.

An important aspect of the Common Agricultural Trade Policy is the encouragement it gives to other EEC policies, especially the Development Co-operation Policy. In relation to the application of this latter policy to the ACP, Article 8 of the proposal advances the argument that the ACP should be encouraged to promote their own development rather than relying on the EEC to achieve this objective. It recognises that developing countries, and especially the ACP, can do more to promote this than the EEC can. At the same time a role can be found for the EEC. In Articles 8 and 9 the EEC performs in the role of insurer. During the transitional period

to either economic development or food self-sufficiency, the EEC will assist the efforts of the developing countries. A more active form of assistance is anticipated by Article 10 in the proposal for a new form of generalised preferences.

The philosophy which pervades Articles 8 and 9 is reflected in Article 12 of the proposal, relations with the Mediterranean. In recognition of the fact that the labels developed and developing are mere convenience rather than reflections of reality, Article 12(3) suggests that EEC efforts in the Mediterranean should not solely concentrate on the non-member States. Provision is made for a regional development policy which will encompass some of the "poorer" member States. Additionally, the trade policy would encourage the development of EEC policies in the area of energy, technology, and political co-operation.

These policies will be important not only in the relationship established with the Mediterranean countries but also with the countries of EFTA and Eastern Europe. The resources for the development or enhancement of these policies will be derived from the savings the EEC makes as it reduces expenditure on the CAP price policy. If the total domestic costs of the CAP is reflected by the addition of the costs to consumers and the costs to taxpayers minus the benefit received by producers, then the adoption of the proposed trade policy will involve a decrease in domestic costs. The price paid for agricultural produce by the consumer will decline as domestic production is supplemented by overseas production at ever-increasing levels. The costs to the taxpayer will decline as less will be spent on price policy and more on structural re-adjustment or the deficiency payments system. The revenue freed from the adoption of the policy will, as noted above, be deployed in other EEC policies.

The connection between decreasing costs for the CAP and increasing revenue for the other policies of the EEC may alleviate the burden imposed by the CAP on the EEC budget. The benefits

will not however be totally internal. Externally, the policy provides that the EEC adopt an active export policy for agricultural products, albeit without excessive reliance on the export refund system. In addition, the liberalization of agricultural trade will have important consequences for industrial trade. The concept of reciprocity/balance of rights and obligations will ensure that the burden imposed on some countries by liberalising agriculture are matched by the benefits they receive as other countries liberalise industry. For the EEC, this is an attractive trade-off.

Is the proposal for a common agricultural trade policy a utopian recommendation? To the extent that the adoption of the policy represents an imaginative step forward in the adaptation of the CAP, it represents a change in the direction of the CAP. Harvey has identified four types of reform of the CAP: passive, defensive, active or potential.¹⁰ The current phase of adaptation reflects a defensive type of reform, reacting to the internal inconsistencies of the policy. As such ad-hoc solutions are adopted. Note the series of measures to deal with the problems of over-supply in the milk sector; premiums for slaughtering dairy cows; premiums for the conversion of dairy herds to beef production; the co-responsibility levy; the super levy; the guarantee thresholds and the quota system. Despite these measures, over a period of fourteen years, the problems of over-supply in the milk sector remain. Current attempts to adapt the CAP represent short-term answers to the problems of European agriculture.

Despite this, the CAP has reached a turning point in its history. The nature of this turning point is the realisation that the economic, social and political forces, which have for so long the adoption and development of a common agricultural trade policy will assist the development of the EEC in all other areas.

¹⁰ "The Progress so far in CAP Reform." in ed Denton et al Reform of the CAP and the re-structuring of the EEC Budget. (1983).

dominated the direction of the CAP, will play a lesser role in the future. As Michel Rocard indicated,¹¹

"The common agricultural policy will be less popular because its incentives are more limited and weaker, but it should allow Europe to catch its second wind, now that it has shown it can put its agricultural affairs in order."

The CAP has embarked on the road to reform, greater emphasis is now being placed on structural policy for example. For these reasons the proposal for a common agricultural trade policy is not a utopian recommendation, rather it affords the EEC an opportunity to integrate the CAP with a number of existing EEC policies.

Throughout this paper the conflict between the CAP and the external policies of the EEC have been noted. These conflicts prevent the proper implementation and success of the external policies. Note the conflict between the CAP and the development co-operation policy pursued by the EEC through the Lomé Convention, concessions of any real value are denied to the ACP as a result of the CAP. The adoption of the common agricultural trade policy would eradicate these conflicts over time. The underlying philosophy of this new policy, that of reluctant liberalism, will allow the EEC to exert a positive influence on world economic affairs. The CAP, described as the motor of European integration by some, will be used to promote the development of other common policies. Note the provisions of the policy relating to the Mediterranean requires the co-ordination of the CAP with energy, technology and political co-operation policies. In this way the adoption and development of a common agricultural trade policy will assist the development of the EEC in all other areas.

¹¹ Interview in Herald Tribune, 2 April 1984.

As the House of Lords Select Committee on the European Communities concluded in a 1981 Report on Agricultural Trade Policy,¹²

"A Common Agricultural Trade Policy would prevent agricultural policy from being dictated solely by domestic agricultural or budgetary considerations without due consideration being given to the impact on third countries and hence on the European EEC's wider trading interests."

The Common Agricultural Trade Policy proposed in this paper meets the above goals. It will encourage European trade in agricultural and industrial products and it will reconcile conflicting external policies.

A Common Agricultural Trade Policy represents a way forward not only for the CAP but also for the European Community. It presents the EEC with an opportunity it cannot afford to ignore.

¹² 2nd Report 1981-82, 15.

Bibliography:

- ed Adams & Klein.
Akrasanae
- Al-Asfahani
- Ali L.
- Allen
- Allen D.
American Society
of Int'l Law
- Ames G & Lentner T.
- Artisen & Holt
- Atimomo
Atlantic Paper 1/72
- Avery
- Avramovic D.
- Avramovic D.
- Bailey
Bahcheti
- Balaam & Carey
Balassa B.
- Balassa
- Baldwin & Murray
- Balogh
- Banks
- Barnes
- Baumer and Jacobsen
- Behrmann
- Behrmann
- Stabilizing World Markets (1978)
"ASEAN-EEC Trade Relations — An Overview."
(ed Akrasanae & Rieger ASEAN-EEC
economic relations) 1983.
"Political Perspectives for the Euro Arab
Dialogue in the 80's." (in ed Bielenstein
Europe's Future in the Arab view).
"World Wheat Market & International
Agreements." (1982) 16 JWTL 59.
"The European Common Market & the GATT — A
study in compatibility." (in ed Allen JJ
European Regional Communities).
"The Euro-Arab Dialogue." (1978) 16 JCMS 323.
Just Friends — The US-EEC Agr Export Subsidies
Standoff." (Proceedings of the 77th Annual
Meeting of the ASIL)
— "Can the GATT resolve International Trade
Disputes."
"US Poultry Exports: Challenging EC & Brazilian
Poultry Subsidies." (1986) Florida Int'l LJ 109.
"Yugoslavia & the EEC in the 1970's." (1980) 18 JCMS
355.
Law & Diplomacy in Commodity Economics. (1981).
Europe and the Maghreb. (1972).
"The Common Agricultural Policy: A Turning
Point." (1984) 21 CML Rev 481.
"The International Food Economy." (1982) 16 JWTL
391.
"Common Fund — why and of what kind?" (1978)
12 JWTL 375.
The EC in the World (1973).
"Turkey & the EEC — The Strains of Association."
(1976) 3 JEI 221.
Food Politics (1981).
"Tariff Protection in Industrial Countries."
(1965) 73 Journal of Pol Econ 573.
"The Tokyo Round & the developing countries."
(1980) 14 JWTL 93.
"MFN Tariff Reduction and ldc trade benefits
under the GSP." (1977) 87 Econ Journal 30.
"Europe and Africa." (1962) 1 JCMS 79.
"Economics and Politics of Primary Commodities."
(1976) 10 JWTL 567.
Europe and the developing world — Pt IV of the
Rome Treaty (1967)
"The EC and Comecon." (in ed Feld — Western
Europe's Global Reach (1980).
Development, the International Economic Order
& Commodity Agreements (1978).
"Development and Structure of the GSP." (1975) 9
JWTL 442.

- Berger "Preferential Trade Treatment for Idcs — Implications of the Tokyo Round." 20 Harv.Int.Law Journal 540.
- Bergmann "Agricultural Policies in the EEC — their external implication." (1977) 5 World Development 407
- Bertoletti "Commodities in the Developing & Industrialized Countries" (in ed Ionescu The European Alternatives).
- Bethke "Food Aid : A Negative Factor" (1980)31 Aussenpolitik 180.
- Bhagwati J. The NIEO — The North-South Debate. (1977).
- Bielentsen ed. Europe's Future in the Arab View (1982).
- Binns "The development of the Soviet Policy Response to the EEC." (1977)14 Co-existence 243 .
- Bird "The Role of SDR's in Financing Commodity Stabilization" (1976)10 JWTL 371 .
- Blackburn & Merry "The EEC & US Policies in the Caribbean Basin." (in ed Stevens — The EEC & 3rd World: A Survey III — The Atlantic Rift).
- Blackhurst "General v. Preferential Tariff Reductions for Idc exports." (1972) 38 Southern Econ Journal 350.
- Boarmann, Boormann & Stegger The European Community's GSP
- Bos "Food aid by the EC — Policy & Practice" (1978) ODI Rev 1/78, 38.
- Bot "The EC-CMEA: Is a meaningful relationship possible." (1976) 13 CML Rev 335.
- Bourgeois et al. Protectionism and the EC (1983).
- Braakman "Monetary Evolutions & the CAP" (1978) E L Rev.
- Brandt, et al. "Forum of Global Strategy" (in ed Stevens. A Survey III — The Atlantic Rift).
- Brinkhorst "Lomé & Further" in ed Von Geseau — The Lomé Convention & a NIEO).
- Brown Primary Commodity Control (1975).
- Brown The Political & Social Economy of Commodity Control (1980).
- Bucholz "The Multilateral trade negotiations & EEC agriculture." (in ed Tracy & Hodac — Prospects for agriculture in the EC).
- Buckwell, Harvey The Costs of the CAP (1981).
- Parton & Thomson
- Burrows "A Community of 13. The question of Turkish membership of the EEC." (1978) 17 JCMS 143.
- Caine et al. Trade Negotiations in the Tokyo Round — A quantitative assessment. (1978).
- Camps M. First World Relationships: The Role of the OECD (1975).
- Carr "The Position of the EC." (in ed Wessels Europe and the North South Dialogue Atlantic Paper No.35.
- Casadio Transatlantic Trade-USA-EEC confrontation in GATT (1978).
- Casadio "External Relations of the EEC." (1973)7 JWTL 434.
- Cathie The Political Economy of Food Aid. (1980).
- Cheyson "Europe and the 3rd World." (1975)31 World Today 232 .

- Coccia M. "Settlement of disputes in GATT under the Subsidies Code: Two Panel Reports on EEC Export Subsidies." (1986) 16 GA.J.Int'l & Comp.L. 1.
- Coffey ed P. Coffey The External Economic Relations of EC (1976).
- Cohen Economic Policies of the Common Market. (1979).
- Cohn "Implications a free trade area between EEC & Israel." (1976) 10 JWTL 252.
- Commonwealth Secretariat "Canada & the EEC's CAP — the issue of trade in cheese." (1978) JEI 125.
- Protectionism — Threat to International Order. Report by a Group of Experts. (1982).
- Coppens, Faber & Lof "EEC's security of supply with raw materials & the interests of ldc's — the need for a co-operative strategy." (in ed Von Geusau — The Lomé Convention & NIEO).
- Cooney The Community in Crisis. (1979).
- Cooper "The EC's System of GTP. A Critique." (1971-72) 8 J of Development Studies 379.
- Corbet H. "Issues relating to the EC's imports of Asean's primary products" (in ed Akransee & Rieger — Asean-EEC Economic Relations).
- Corbet H. & Jackson R. ed. In Search of a new world economic order. (1974).
- Cosgrove C.C. "Britain, the developing Commonwealth & EEC." (1970) The World Today 247.
- Cosgrove C.C. & Twitchett W. "The second Yaoundé Convention in perspective." 30 World Today 51.
- Cosgrove & Twitchett ed. New International Actors: The UN & EEC (1970). Vol.45-
- The Courier The Arab Policy of the EEC (1982).
- Cova "Compensatory financing in North-South dialogue." (1979) 13 JWTL 66.
- Cuddy J. "The Common Fund and Earnings Stabilization." (1978) 12 JWTL 107.
- Curry J.R. "Beneficiary Selection under the US GSP." (1976) 10 JWTL 161.
- Dadoo & Kuster "The Road to Lomé." (in ed Von Geusau).
- Dagtaglou "The Southern Enlargement of the EC." (1984) 21 CML Rev 149.
- Daleiden "Agricultural Policy & the Import of Poultry Meat from the US." (1963) 1 CML Rev 339.
- Dam K. GATT and International Economic Organizations (1970).
- Dam K. "Regional Economic Arrangements & the GATT — The Legacy of a Misconception." (1963) 30 U.Chi L Rev 615.
- Dam K. "GATT as an International Organization." (1969) 3 JWTL 374.
- Dam S. "Agricultural Co-operation and the Lomé Convention." (in ed Von Geusau).
- de Bandt (ed) European Studies in Development (1979).
- Delormey, Chabert & Egg "EC Food Aid Policy ." (in ed Ionescu — The European Alternatives).
- Denton et al Reform of the CAP & Restructuring the EC Budget (1983).

- Denoon
Deubner
Freidberg W.
- Dolan M.
- Dolan M.
- Donges et al.
- Dorsey
- Edwards & Wallace
- El-Agraa A.M. (ed)
Elkan P.
- Espiell
- Espiell
- Etienne
- Europe Institut
- Evans
- Evans
- Faber
Faber
Fawcett
- Fawcett
- Fawcett & Parry
- Feld
Feld
- Fernon
- Finger
- Finger & Derosa
- Fisher
- Fisher
- Focke K.
- Francis
- The NIEO — A US Response.(1979).
- "The Southern Enlargement of the EC — Opportunities & dilemmas from a West German point of view." (1980)18 JCMS 1229.
- "The Lomé Convention & European Relationship with the third world — A critical analysis." 1978 JIEI 372.
- "Lomé 2 — the evolution of relations between the EC & ACP."(in ed Feld — Western Europe's Global Reach, 1980).
- The 2nd Enlargement of the EC: Adjustment Requirement & Challenges for Policy Reform (1982).
- "Preferential Treatment: A New Standard for International Eco. Relations." (1977)18 Harvard Int'l L.J. 109.
- A wider EC?: Issues and Problems of further enlargement. 1976.
- The Economics of the European Community.(1980).
- "Tapering Quotas for the Marketing of Primary Products" (1977) 11 JWTL 180.
- "The MFN Clause — its present significance in GATT" (1971)5 JWTL 29.
- "GATT: Accommodating Generalized Preferences." (1974)8 JWTL 341.
- "Community Integration — The external environment." (1980)18 JCMS 289 .
- EEC Relations between the EEC & Greece & Turkey. (1976).
- The Kennedy Round in American Trade Policy (1971).
- "Subsidies & Countervailing duties in GATT. Present law & future prospects." (1977) 3 Int'l Trade Law J. 211.
- The E.C. and Development Co-operation
- "The Economics of Stabex." (1984)18 JWTL 52.
- "The function of Law in ICAs." (1970) 44 BYIL 157.
- "UNCTAD IV Another Bill of Rights."32 World Today 152 (1976).
- Law & International Resource Conflicts.
- The European Common Market & the World(1967).
- The EC in World Affairs — Economic Power & Political Influence (1976).
- Issues in World Farm Trade — Chaos or Co-operation(1971).
- "GSP Impact on donor countries." 25 Bulletin of Econ Research 43 (1973).
- "The CFF & Export Instability." (1980) 14 JWTL 14.
- "Enforcing Export Quota Agreements."(1971) 22 Harv.Int. L.J. 401.
- "The CAP of the EEC — its impact on Canadian Agriculture." (1979)3 JIEI 37.
- From Lomé I to Lomé II.(1980).
- "Producers Association in relation to the NIEO." 30 ICLQ 745.

- Frank "The Graduation Issue for ldc's" (1979)13 JWTL 289.
- Freidberg W. "Lomé, Co-operation rather than confrontation." (1975) 9 JWTL 691
- Freidman L. The Troubled Alliance: Atlantic Relations in the 1980s(1983).
- Frey Wouters The EC and the 3rd World — The Lomé Convention and its impact(1980).
- Gaines, Sawyer et Sprinkle "EEC Mediterranean Policy & US Trade in Citrus." (1981)15 JWTL 431.
- Gariepy International Commodity Agreements, 25 ICLQ 677 (1976).
- GATT Basic Instruments and Selected Documents. Supp. 1-
- Gerhard "Commodity Trade Stabilization through International Agreements."(1963) 28 Law & Contemp Problems 276.
- German Development Institute The N-S Dialogue — A mid-term Review (1979)
- The E.C. and the Acceding Countries of Southern Europe.(1979)
- Ginman & Murray "The GSP. A review & re-appraisal." (in ed Sauvall & Hasenpflug)
- Ginsberg "The EEC and the Mediterranean." (in ed Lodge — Institutions and Policies of the EC).
- Ginsberg "The EC & the USA." (in ed Lodge).
- Goldstajn "The Relationship of Yugoslavia & the EEC." (1981)18 CML Rev 568 .
- Goodwin & Mayall EEC Policies & Options (in ed Ionescu, The European Alternatives).
- Goodwin & Mayall The New International Commodity Regime (1979)
- F.Gordon - Ashworth International Commodity Control. A Contemporary History & Appraisal (1984).
- Goreux L.M. The Compensatory Financing Facility, IMF Staff Paper No.34 (1980).
- Graham T. "The US GSP for ldc's — International Innovation and the Art of the possible." 72 AJIL 513.
- Green & Kirkpatrick "The IMF's Food Financing Facility" (1982)16 JWTL 265.
- Grennes "Economic Interdependence & the Variability of Tariffs." (1980)14 JWTL 242 .
- Hager W. "The Nine in the Commodity Commission" (in ed Wessels. Europe and the N-S Dialogue Atlantic Papers no.35).
- Hager W. "Administered Commodity Markets — The Search for Stability." (in ed Sauvant & Hasenpflug).
- Haight "Customs Union & Free Trade Areas under GATT. A re-appraisal." (1972) 6 JWTL 391.
- Hallett The Economics of Agricultural Policy (2nd ed) (1981).
- The Harberler Report Trends in Internat Trade — A Report by a Panel of Experts 1958.
- Harris S & Hagelberg "The effect of Lomé on World Sugar Cane Producers."(1975) 2 ODI Rev 38 .
- Harris S. The CAP & the World Commodity Scene. (1975).

- Harris S. EEC Trade relations with the USA in agricultural products (1977).
- Harris S. "US & EEC policy attitudes compared towards the ISA 1977." (1980) J. of Agr. Econ. 351.
- Harris et al. Re-negotiation of Lomé with special reference to agriculture (1979).
- Harris & Bridges European Interests in ASEAN. (1983).
- Harris Swinbank & Wilkinson Food and Farm Policies of the EEC .(1983).
- Heathcote Agricultural Politics in the EC(1971).
- Hedrich & Von der Ropp "Lomé II in the light of experience with Lomé I." (1979)29 Ausseipolitik 300.
- Heister "The EC and the East Bloc." (in ed Lodge).
- Helldorf, Bossard, Hoquet & Szarf "Food aid from the EC." (in ed Ionescu - The European Alternatives) 1978.
- Helleiner "Lomé -,Market Access & Industrial Co-operation" (1978)13 JWTL 181 .
- Henig S. External Relations of the EC - Association and Trade Agreements. (1971)
- Hermes "The UNCTAD & the North South Dialogue" (1981) 31 Aussenpolitik 3.
- Hewitt A. The Lomé Convention. Myth & Substance of the Partnership of Equals (1981) ODI Rev 2 .
- Hewitt A. "The Lomé Convention — Entering a Second Decade" (1985)23 JCMS 95.
- Hewitt A. "Stabex — Analysing the effectiveness of an innovation." (in ed Stevens-Vol III).
- Hewitt & Stevens "The Second Lomé Convention." (in ed Stevens The EEC & 3rd World A Survey Vol. 1).
- Hillman J. Non-Tariff Agricultural Trade Barriers (1978).
- House of Lords Select Committee on EC. Trade Policy — The Tokyo Round (1979-80 41st Report)
- Kibola EEC Sugar Policy (1979-80) 44th Report 1980-81 8th Report.
- Kirkpatrick & Nixon Generalised Scheme of Tariff Preferences 1979-80 61st Report.
- Kirkpatrick & Nixon Development Aid Policy (1980-81 21st Report).
- Knox Agricultural Trade Policy 1981-82 wnd Report.
- Huber "The Practice of GATT in examining of regional arrangement under Art.XXIV GATT."19 JCMS 281 .
- Hubert "The outcome of the GATT MTN." (in ed Tracy & Hodac — Prospects for agriculture in the EC).
- Huddelston et al. "The EEC and 3rd World Food and Agriculture." (in ed Stevens A Survey Vol.II).
- Hudec R. "GATT or GABB? — The future design of the General Agreement on Tariffs and Trade." (1970-71) 80 YLJ 1299.
- Hudec R. GATT legal system & world trade diplomacy(1975).
- Hunnings "Enforceability of the EEC-EFTA Free Trade Agreements." (1977) EL Rev 163.
- Hunnings "Enforceability of EEC-EFTA Free Trade Agreements (1977) 2 EL Rev 163.
- Hurni "The Evolution of GSP of the EC." (1976) 10 JWTL 383.
- Jackson J. World Trade & The Law of GATT.

- Jackson J. "Governmental disputes in Industrial Trade Relations — A proposal in the context of GATT." (1979) 13 JWTL 1.
- Jackson J. "US-EEC Trade Relations — Constitutional Problems of Economic Interdependence." (1979) 16 CM L Rev 453.
- Joeckes & Kirkpatrick "Results of UNCTAD V." (1980) 13 JWTL 535 .
- John I. EEC Policy towards Eastern Europe.
- John I. "Co-operation in Socialist Europe." (in ed Twitchett European Co-operation Today)
- Johnson D.G. World Agriculture in Disarray (1973).
- Jones Europes Chosen Few — Policy and practice of the EEC aid programme (1973).
- Jones & Tulloch "Is Food Aid Good Aid." (1974) ODI Rev 2/74.
- Jones D. "Food Interdependence and Europe." (1975) ODI Rev 2/75 25 .
- Josling T. et al. Options for farm policy in the EC (1981).
- Josling T. Agriculture in the Tokyo Round Negotiations (1977)
- Josling T. "The CAP & International Commodity Agreements." (in ed Tracy & Hodac — Prospects for agriculture in the EEC).
- Josling T. & McFarquahr Agriculture & the State.
- Kahler M. Europe and its 'Privileged Partners' in Africa and the Middle East.
- Kemp Africa & the EEC in the light of Lomé & UNCTAD IV (1976).
- Khan K. The Law and Organization of ICAs (1982).
- Khan K. "The International Sugar Agreement." (1977). 3 Food Policy 104.
- Khan K. "The fundamental elements of the commonfund." (1979) 5 Food Policy 38.
- Kibola "Stabex and Lomé III." (1984) 18 JWTL 32.
- Kirkpatrick "Lomé II." (1980) 14 JWTL 352 .
- Kirkpatrick & Nixon "The N-S Debate : Reflections on the Brandt Commission Report." 3 Banks Rev 131.
- Kirkpatrick & Nixon "UNCTAD IV & the NIEO." 3 Banks Rev 112.
- Knox The Common Market & World Agriculture. (1972).
- Kofoed "Prospects for EEC Agriculture." (in ed Tracy & Hodac).
- Kohnstamm & Hager A nation writ large. (1973).
- Kramer "Changing Principles Governing International Trade." (1974) 8 JWTL 227.
- Krenin & Finger "A Critical Survey of the NIEO." (1977) 10 JWTL 493.
- Krushnamurti "Agreement on Preferences — A generalised system in favour of ldc's." (1971) 5 JWTL 45.
- Langhammer ASEAN manufacturer exports in the EC Markets (in ed Akrasanee & Rieger).
- Lasok D. "Involvement with the EEC — Some Canadian Consideration." (1976) 22 McGill LJ 574 .
- Law A.D. International Commodity Agreements (1975).
- Lebahn "Alternatives in EC-CMEA Relations." (1980) 31 Aussenpolitik 147.
- Levcik & Stankovsky Industrial Co-operation between East and West (1979).
- Liesner "Atlantic Free Trade." (1967) 1 JWTL 224.

- Lister T. "The functioning of Lomé II." (1982)16 JWTL 434 .
- Lloyd "The Australian Tariff Preference Scheme for ldc's." (1970) 4 JWTL 468.
- Lodge J. "The EC & New Zealand." (in ed Lodge Institutions & Policies of the EC).
- Long F. The Political Economy of EEC Relations with ACP States (1979).
- Low "The Definition of Export Subsidies in GATT."(1982)16 JWTL 375.
- MacAlister- Smith "The EEC & International Humanitarian Assistance." (1981) 1 LIEI 89.
- MacKenzie "Food Aid & Agricultural Markets — Considerations in EEC Policy." (in ed Tracy & Hodac — Prospects for EEC Agr.).
- McGovern International Trade Regulation (1982).
- McNicol D.L. Commodity Agreements & Price Stabilization (1978).
- McQueen M. "Trade Preferences for ldc's vs mfn tariff reductions." (1979) 30 J Agr Econ 345.
- McQueen M. "Lomé & the Protective Effect of Rules of Origin." (1982)16 JWTL 11.
- Mahant "Canada & the EEC."(1981) 4 JEI 275 .
- Malgrem & Schlechty "Rationalizing World Agricultural Trade." (1970)4 JWTL 515 .
- Marsh European Agriculture in an Uncertain World. Atlantic Paper 1/75.
- Marsh & Swarmey Agriculture and the EC (1980).
- Maslen J. "EC Relations with State Trading Countries 1961-83. "3 Yearbook of European Integration 323.
- Matthews The Association System of the EC (1976).
- Meier Problems of Trade Policy (1973, N.York).
- Meier Problems of Co-operation for Development (1973).
- Merciai "Safeguard Measures in GATT." (1981)15 JWTL 41.
- Meyer International Trade Policy (1975)
- Mikesell "Commodity Agreements & Aid to Developing Countries." (1963) 28 Law & Contemp.Prob. 294.
- Miller "The EC & Australia." (in ed Lodge Institutions & Policies of the EC).
- Miller The EEC & Australia (Melbourne-Nelson) 1976.
- Minet, Siotos. & Tsakaloyarnis Spain, Greece & Community Politics (1982).
- Mingst "Economic Determinants of ICAs." (1979)13 JWTL 158 .
- Mischani,et al. "The Pyramid of Privelege." (in ed Stevens — The EC & the 3rd World Vol.1).
- Moss The Lomé Conventions & their Implications for the US (1982).
- Moss & Ravenhill "Trade between the ACP & EEC during Lomé I ."(in ed Stevens A Survey III).
- Moss & Winton A NIEO — Selected Documents 1945-75.
- Mower The Europe Community & Latin America. A Case of study in global role expansion (1982).
- Muniz "EEC: Latin America: A Relationship to be defined." (1980)19 JCMS 55 .

- Murray T. "How helpful is the GSP to ldc's." (1973)83 Econ Journal 449 .
- Murray T. Trade Preferences for developing countries (1977).
- Musto "The Mediterranean & the Middle East." (in ed Stevens. A Survey III — The EEC & the 3rd World — The Atlantic Rift).
- Mytelka "Lomé and a new international division of labour." 1977 REvue d'integration Europeene 63.
- Nagle Agricultural Trade Policies (1976).
- Ng'ong'da "Legal & Policy Conflicts in the EEC's Sugar Regime." (1981)14 CILSA 237 .
- Nicolandes P. "Preferences for Developing Countries: A Critique." (1986)20 JWTL 73.
- Noel E. "The external relations of the EEC & its internal problems." (1975)10 Govt & Opp 159.
- Nusbaumer "Origin Systems and the Trade of ldc's."(1979)13 JWTL 34 .
- O'Grady "The International Natural Rubber Agreement — Problems & Progress." (1981-82)16 G.Wash J.Int L & Econ 605.
- O'Keefe D. & Schmers H. ed. Mixed Agreements (1983).
- Orechowski & Sampson "Trade Restrictions in the EEC/US and Japan." (1980) 14 JWTL 220.
- Olofin "ECOWAS & The Lomé Convention. — An experiment in complementary or conflicting Customs Unions Arrangements." 16 JCMS 583.
- OECD Agricultural Policy of the EEC (Paris 1974).
- OECD "Tariff Preferences for ldc's (Documentation forwarded to UNCTAD)." 4 JWTL 474.
- ODI Europe and the Developing World, ODI Rev 1 1979.
- Parkinson "The UN Integrated Programme for Commodities." (1981) 34 CLP 259.
- Payer The Commodity Trade of the 3rd World (1975).
- Pearce J. "Reform of the CAP and the 3rd World." (in ed Stevens — A Survey Vol.II).
- Pearce J. The Common Agricultural Policy (1981).
- Perez L.L. (ed) Trade Policies towards Developing Countries (1978).
- Persaud B. "Export earnings from Commodities — export earnings stabilization in the Lomé Convention." (in ed Von Geusau)
- Pescatore P. "External Relations in the case law of the Ct of J of the EC."(1979) 18 CML Rev 615.
- Petersmann E.U. "International and European Foreign Trade Law: GATT dispute settlement proceedings against the EEC." (1983) 22 CML Rev 441.
- Phegan "GATT Article XVI:3 Export Subsidies & 'Equitable' Shares."(1982)16 JWTL 251.
- Phillips & Ritson "Reciprocity in International Trade."(1969) 20 J Agr Econ 303 .
- Pinder J & P E.C. Policy towards Eastern Europe (1975).
- Pinder J. Economic Integration and East-West Trade, (1977)15 JCMS 1.

- Pinder J. "Integration in Western & Eastern Europe: Relations between the EC & CMEA." (1980)18 JCMS 114
- Pinder J. "The Community's need for an active external economic policy." 31 World Today 308.
- Pinder J. "The Community & Comecon. What could negotiations achieve?" 33 World Today 176 (1977).
- Pinder J. "The Community & Developing Countries Associates & Outsiders." (1974) 12 JCMS 53.
- Pinder J. "The Community & State Trading Countries." (in ed Twitchett K.J.)
- Preibsch R. Towards a new trade policy for development.
- Pronk J. "Food Aid." (in ed Tracy & Hodac).
- Quattra A. Trade Effects of the Association of African Countries with the EEC.(1969) IMF Staff Paper.114
- Rabie "The Euro- Arab Dialogue & the evolution of regional equilibrium around the Mediterranean Basin." (in ed Brelenstein).
- Rajana "Europe & the 3rd World — A critical Analysis of Lomé II."(1980) 3 JIEI 197 .
- Rangarjan Commodity conflict. (1978).
- Reyes Building Bridges & Opening Doors (ed Akrasanee & Rieger, ASEAN-EEC Economic Relations).
- Richter Reflections on a policy for Agricultural Trade.
- Rollo "The 2nd Enlargement of the EEC." (1979) 30 J Agr Econ 333.
- Rom The Role of TariffQuotas in Commercial Policy. (1979).
- Rubin Lomé II — The renegotiation of the Lomé Convention.(1978).
- Rustow & Penrose Turkey and the Community (1981).
- Sack "Commission's powers under the safeguard clauses of COMs."(1983) 20 CML Rev 757 .
- Sakr "Euro-Arab Political interrelations in an unbalanced system of the three Worlds." (in ed Bielenstein).
- Sampedro J.L. & Paymo J.A. (ed) The enlargement of the EC — Case Studies of Greece Portugal & Spain.
- Sampson & Yeates "An Evaluation of the CAP as a barrier facing agricultural exports to the EEC."
- Sauvant & Hasenpflug The NIEO: Confrontation or Co-operation between North & South (1977).
- Sauvant K.P. The Group of 77 — The 3rd World without Superpowers. (1982).
- Schmidt "The Case against Commodity Agreements." (1962) 28 Law & Contemporary Problems 313.
- Schneider (ed) From nine to twelve — Europe's Destiny? (1982).
- Schultz & Schumacher "The Reliberalization of World Trade." (1984)18 JWTL 206.
- Schweisfurth T. "The Treaty making capacity of the CMEA in light of a framework agreement between the EEC & the CMEA." (1985) 22 CMLRev. 615.
- Serre "The Community's Mediterranean Policy after the 2nd enlargement." (1981)19 JCMS 377 .
- Sharp & Whittlemore Europe & the world without.(1977)

- Shaw "EEC-ACP Interactions & Images as redefinitions of Eurafrica." (1980)18 JCMS 135 .
- Shaw "The Mechanism & Distribution of Food Aid."(1970) 4 JWTL 207.
- Shlaim A. "The Community & the Mediterranean Basin." (in ed Twitchett 1980).
- Schlaim A. & Yainopolous G. (ed) The EEC & Mediterranean Countries (1976).
- Schlaim & Yainopoulis (ed) The EC & Eastern Europe (1978).
- Shonfield (ed) International Economic Relations in the Western World (1959-71) Vol.I Politics & Trade.
- Simantov "Outlook for World Agricultural Markets — A General View." (in ed Tracy & Hodac).
- Simmonds K.R. "The Lomé Convention and the NIEO." (1976) 13 CML Rev 315 .
- Simmonds K.R. "The Lomé Convention — Implementation & Renegotiation."(1979) 16 CML Rev 425 .
- Simmonds K.R. "The Second Lomé Convention: The Innovative Features." (1980) 17 CML Rev 415.
- Simmonds K.R. "The Third Lomé Convention." (1985) 22 CML Rev 389.
- Simmonds K.R. "The Evolution of the External Relations Law of the EEC." (1979) 28 ICLQ 644.
- Sjostedt The external role of the EC (1977).
- Smith I. The EC & the world sugar crisis (1974).
- Smith I. "Structure & Policy Changes in World Sugar."(1977) 11 JWTL 228.
- Smith I. "EEC Sugar Policy in an International Context." (1981)15 JWTL 95.
- Smith I. "GATT-EEC Sugar Export Refunds Dispute." (1981) 15 JWTL 534.
- Southgate "World Trade in Sugar." (1967)1 JWTL 595.
- Steenbergen "The Common Commercial Policy."(1980) 17 CML Rev 229.
- Steenbergen "The Status of GATT in Community Law." (1981)15 JWTL 337.
- Steinbach "Some aspects of the future role of western countries in regard to international co-operation in the Mediterranean area & with the Arab region." (in ed Bielenstein).
- Stevens C. Food Aid and the developing world (1979).
- Stevens C. The EEC and ACP (in ed Lodge Institutions and Policies of the EC).
- Stevens C. The EEC & the 3rd World. Vol.1 (1981).
- Stevens C. (ed) The EEC & the 3rd World (A Survey 11) (1982).
- Stevens C. The EEC & the 3rd World A Survey III — The Atlantic Rift (1984).
- Stordel H. "Trade Co-operation — Preferences in Lomé Convention the GSP and the World Trade System." (in ed Von Geusau).
- Strak The Measurement of Agricultural Protection.
- Strasser The finances of Europe. (1986).
- Sutton M. The EEC and the developing world — A changing relationship (1976).
- Swinbank "EC Agriculture & the World Market." (1980)62 Am J Agr Econ 426.

- UNCTAD TD/B/C.5/53 4th General report on the implementation of the GSP
- UNCTAD TD/B/C.5/73/ Suppl The GSP & the Second Lomé Convention. (Dec 80).
- UNCTAD TD/B/C.5/87 Evaluation of the trade effects of the GSP (Jan 84).
- UNCTAD TD/B/C.5/90 8th General Report on the implementation of the GSP (Mar 84).
- UNCTAD TD/B/C.5/96 9th General Report ... Feb 85.
- UNCTAD TD/B/C.5/103 Transposition of the EC's GSP origin rules to take a/c of the introduction of the HS (Jan 86).
- UNCTAD TD/B/C.5/105 10th General Report (Feb.86).
- UNCTAD TD/B/GSP/EEC/1-12 Note by UNCTAD Secretariat EEC GSP scheme for [year].
- UNCTAD TD/227 MTN Evaluation & further recommendations May 1979.
- UNCTAD TD/273 Commodity Issues: a review & proposals for further action. June 83.
- UNCTAD TD/184 Actions on Commodities, including decisions or an I.P. in the light of the need for change in the world commodity economy [??]
- UNCTAD TD/229 Action on export earnings Stabiliz & developmental aspects of commodity policy [March 79]
- UNCTAD (Supp 3 - Marketing and distribution of primary commodities. Areas for further international co-operation).
- UNCTAD TD/229/Supp 2 - Processing before export of primary commodities areas for further international co-operation.
- USDA International Food Policy Issues (1978).
- UACES Spain, Portugal & the EC.
- Ustor "The mfn customs union exception." (1981) 15 JWTL 377.
- Valdes & Huddleston Potential of Agricultural exports to finance increased food imports in selected ldc's. (1977).
- Van Praag N. EPC & the Southern Periphery (1978).
- Vasey "The 1985 Farm Price Negotiations and the reform of the Common Agricultural Policy." (1985) 22 CML Rev 649.
- Villair L'etat de la PAC (in ed Tracy & Hodac).
- Von Geuseau (ed) The External Relations of the EC. (1974).
- Von Geuseau (ed) The Lomé Convention and the NIEO. (1977)
- Waelbroeck "Trends of EC Protection & the Prospects of ASEAN Trade." (in ed Akransanee & Rieger).
- Wainwright "The execution of Community food aid to ldc's." (1976) 13 CML Rev 367.
- Walker "The International Law of Commodity Agreements." 28 Law & Contemporary Problems 392 (1963).
- Walker H. "Dispute Settlement — The Chicken War. " (1964) 88 AJIL 671.
- Wall A. The Lomé Convention — Stabex & third world aspirations (1976).

- Wallace W & Herremain A Comm of 12? The Impact of further enlargement of the EC (1978).
- Wallace W. "Wider but weaker — The continued enlargement of the EEC." 32 World Today 104.
- Warley T. "Western Trade in Agricultural Products." (in ed Shonfield, Internat Econ Relations of the Western World 1959-71 Vol.1 Politics & Trade (1976) .
- Warley T. "Agriculture in International Economic Relations." 58 Am J Agr Econ 820.
- Wassermann U. "The EEC-Israel Trade Agreement." (1976)10 JWTL 92.
- Wassermann U. "International Cocoa Agreement."(1976) 10 JWTL 300.
- Wassermann U. "UNCTAD-Internat Olive Oil Agreements." (1979) 13 JWTL 447.
- Wassermann U. "UNCTAD-The Common Fund." (1979). 13 JWTL 355
- Wassermann U. "International Food Aid."(1982) 16 JWTL 530.
- Wellenstein E. "The Relations of the EEC with Eastern Europe." 1983 EPW 197.
- Weinschenck "Basic Alternatives of the future agricultural policy in the European Common Market." (1975) 26 J Agr Econ 145.
- Wellenstein E. "Free Trade agreements between an enlarged EEC & EFTA." (1973) 10 CML Rev 137.
- Wellenstein E. "The participation of the Community in ICAs." (in —in memoriam JDB Mitchell) (1985).
- Wellenstein "25 Years of EC External Relations." (1979) 16 CML Rev 407.
- Weston "Who is more preferred — an analysis of the new GSP." (in ed Stevens - A Survey II - Hunger in the World) 1982.
- Weston, Cabie & Hewitt The EEC GSP-Evaluation and REcommendations for change.
- Wionczek "The Relationship between the EC & Latin America in the Context of International Economic Crisis." (1980) 19 JCMS 160.
- Yannopoulos G. "The Second Enlargement of the EEC & the Trade Interests of ldc's." (1981) 4 JEI 167
- Yannopoulos G. "The Med Policy of the EEC — Its Impact on the Associated ldc's." (1977) 11 JWTL 489.
- Yeats A.J. Trade & Development Policies (1981).
- Young "Associated with the EEC." (1973) 11 JCMS 132 .
- Yusuf Legal Aspects of Trade Preferences for Developing States.
- Yusuf "Differential & More Favourable Treatment — The GATT Enabling Clause." (1980)14 JWTL 488 .
- Zartman The Politics of trade negotiations between Africa & EEC (1971).
- Zartman "Europe & Africa; Decolonization or dependency." (1975-76) 54 Foreign Affairs 325.

Documents of the European Communities

- Bulletin of EC Supp 5/82 - Memo on the Community Development Policy.
 Bulletin of EC Supp 4/73 - Memo on a Community Policy on Development Co-operation.
 Bulletin of EC Supp 1/73 - Renewal and enlargement of the association with the AASM and certain commonwealth developing countries.
 Bulletin of EC Supp 4/83 - Adjustment of the CAP.
 Bulletin of EC Supp 4/81 - A new impetus for the Common Policies (Commission memo to Council - to complement the Commission mandate of 30 May 1980.
 Bulletin of EC Supp 2/75 - Stocktaking of the CAP.
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 Green Europe 192 CAP and agricultural trade with developing countries.
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 Green Europe 207 The Milk Quota System.

- European Parliament Working Document 1-559/80 Report on the conclusion of Lomé II.
 European Parliament Working Document 1-605/83 Report on the context of future ACP Convention to follow Lomé II.
 European Parliament Working Document 1-456/83 Report on the medium and long-term problems of the Community's sugar policy in relation to the ACP-EEC Sugar Protocol.
 European Parliament Working Document 1-545/80 Report on the proposals for 1981 GSP & 5 yr scheme 1981-85.
 European Parliament Working Document Doc 128/79 Echternach Seminar on the future of the CAP.
 European Parliament Working Document 467/79 Report on the effects of the Mediterranean Policy on Community agriculture.
 European Parliament Working Document 1-785/82 Report on Mediterranean agriculture and the problems of enlargement of the EEC towards the South.
 European Parliament Working Document 487/78 Report on the negotiations for a new Lomé Convention.
 European Parliament Working Document 1-104/83 Report on integrated development operations in Community regional policy.
 European Parliament Working Document 1-37/80 Report on proposals from Commission to Council concerning changes in the CAP to help balance the markets.
 European Parliament Working Document 1-987/83 Report drawn up on behalf of the Committee on Agriculture on the Communication from the Commission to the Council on the CAP.

Economic & Social Committee Relations between the EC & USA.